

AMENDED IN SENATE JANUARY 4, 2012

**SENATE BILL**

**No. 323**

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**Introduced by Senator Vargas**

February 14, 2011

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An act to add Section 17657 to, and to add Title 2.5 (commencing with Section 17701.01) to, the Corporations Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Vargas. California Revised Uniform Limited Liability Company Act.

(1) Existing law, the Beverly-Killea Limited Liability Company Act, authorizes a limited liability company to engage in any lawful business activity, as specified, and governs the formation of limited liability companies, including requiring the members to enter into an operating agreement that shall be in writing or oral and to execute and file articles of organization with the Secretary of State.

This bill would repeal that act and enact the California Revised Uniform Limited Liability Company Act which would recast provisions governing the formation and operation of limited liability companies. The bill would also authorize an operating agreement to be in a record or implied, in addition to being in writing or oral, and authorize a combination of those forms. ~~The bill would rename the term that refers to the document members are required to file with the Secretary of State as a certificate of organization. The bill would also provide for a new, low-profit limited liability company that would be authorized to be formed and operated to accomplish charitable purposes, as specified.~~

(2) Existing law establishes requirements and procedures for membership interests in limited liability companies, including voting,

meeting, and inspection rights. Existing law also specifies the duties and obligations of the managers of a limited liability company, including member-managers, as specified. Existing law does not provide for the existence of a series of a limited liability company.

This bill would provide that a member is not an agent of a limited liability company merely by being a member. The bill would also distinguish between a manager-managed limited liability company and a member-managed limited liability company for purposes of imposing fiduciary duties only on persons in control of a limited liability company. The bill would also provide for a series of a limited liability company comprised of certain assets and liabilities identified by a limited liability company as separate from the assets and liabilities of the other series of the limited liability company.

~~(3) Existing law allows a person to reserve a name for a limited liability company for no longer than 2 consecutive 60-day periods and provides that a limited liability company is not formed until it has at least one member.~~

~~This bill would instead allow a person to reserve a name for a limited liability company for up to 2 consecutive 90-day periods. The bill would also allow a person to file a certificate of organization up to 90 days before delivering to the Secretary of State a notice that the limited liability company has at least one member.~~

~~(4)~~

~~(3) Existing law provides that the Secretary of State may issue a certificate of good standing status with respect to a limited liability company. Existing law requires that a limited liability company file with the Secretary of State a statement of information biannually.~~

~~This bill would also authorize the Secretary of State to issue a certificate of existence with respect to a limited liability company and a certificate of authorization with respect to a foreign limited liability company. The bill would require a limited liability company to file biannually with the Secretary of State a report in lieu of a statement of information.~~

*The bill would provide for the filing of specified records and would further provide that an individual who signs such a record affirms under penalty of perjury that the information in the record is accurate.*

~~(5)~~

~~(4) Existing law does not specifically provide for jurisdiction of courts in matters regarding a limited liability company.~~

This bill would allow a limited liability company to be subject to the nonexclusive jurisdiction of courts in another state or the exclusive jurisdiction of California courts. The bill would also allow a member to consent to arbitration, as specified.

~~(6) Existing law provides that a manager of a manager-managed limited liability company and the members of a member-managed limited liability company have authority to execute documents on behalf of, and to bind, the limited liability company.~~

~~This bill would provide that a limited liability company may deliver to the Secretary of State a statement of authority identifying the individuals who have the ability to execute documents on behalf of, and to bind, the limited liability company.~~

~~(7)~~

~~(5) Existing law does not specifically provide for a member to dissociate from a limited liability company.~~

This bill would specify when a member would be dissociated from a limited liability company and the effects of dissociation on the member.

~~(8)~~

(6) Existing law establishes capital contribution standards and liability of members, and regulates the allocation of profits and losses, distributions of money and property, withdrawal of membership, assignment of interests, and dissolution of limited liability companies. Existing law requires the registration of foreign limited liability companies, as defined, with the Secretary of State, and prohibits the transaction of business in this state by an unregistered foreign limited liability company, subject to specified penalties. Existing law also regulates the merger of a limited liability company with one or more limited liability companies or other business entities, as specified, including requiring an agreement of merger and protection of the rights and liabilities of limited liability companies, creditors, and dissenting members.

This bill would revise and recast those provisions.

~~(9)~~

~~(7) Because this bill would make certain actions unlawful expand the scope of the crime of perjury, the bill would impose a state-mandated local program by expanding the scope of certain crimes.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 17657 is added to the Corporations Code,  
2     to read:

3     17657. This title shall become inoperative on January 1, 2013,  
4     and is repealed on January 1, 2015.

5     SEC. 2. Title 2.5 (commencing with Section 17701.01) is added  
6     to the Corporations Code, to read:

7  
8           TITLE 2.5. CALIFORNIA REVISED UNIFORM LIMITED  
9           LIABILITY COMPANY ACT

10  
11           Article 1. General Provisions

12  
13     17701.01. This title may be cited as the California Revised  
14     Uniform Limited Liability Company Act.

15     17701.02. In this title:

16     (a) "Acknowledged" means that an instrument is either of the  
17     following:

18         (1) Formally acknowledged as provided in Article 3  
19         (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4  
20         of Division 2 of the Civil Code.

21         (2) Executed to include substantially the following wording  
22         preceding the signature:

23  
24         "It is hereby declared that I am the person who executed this  
25         instrument which execution is my act and deed.

26         Any certificate of acknowledgment taken without this state before  
27         a notary public or a judge or clerk of a court of record having an  
28         official seal need not be further authenticated."

29  
30     (b) "Articles of organization" means the articles required by  
31     Section 17702.01. the term includes the articles of organization  
32     as amended or restated.

1 (c) “Contribution” means any benefit provided by a person to  
2 a limited liability company:

3 (1) In order to become a member upon formation of the limited  
4 liability company and in accordance with an agreement between  
5 or among the persons that have agreed to become the initial  
6 members of the limited liability company.

7 (2) In order to become a member after formation of the limited  
8 liability company and in accordance with an agreement between  
9 the person and the limited liability company.

10 (3) In the person’s capacity as a member and in accordance  
11 with the operating agreement or an agreement between the member  
12 and the limited liability company.

13 (d) “Debtor in bankruptcy” means a person that is the subject  
14 of either of the following:

15 (1) An order for relief under Title 11 of the United States Code  
16 or a successor statute of general application.

17 (2) A comparable order under federal, state, or foreign law  
18 governing bankruptcy or insolvency, an assignment for the benefit  
19 of creditors, or an order appointing a trustee, receiver, or  
20 liquidator of the person or of all or substantially all of the person’s  
21 property.

22 (e) “Designated office” means either of the following:

23 (1) The office that a limited liability company is required to  
24 designate and maintain under Section 17701.13.

25 (2) The principal office of a foreign limited liability company.

26 (f) “Distribution,” except as otherwise provided in subdivision  
27 (g) of Section 17704.05, means a transfer of money or other  
28 property from a limited liability company to another person on  
29 account of a transferable interest.

30 (g) “Domestic” means organized under the laws of this state  
31 when used in relation to any limited liability company, other  
32 business entity, or person other than a natural person.

33 (h) “Effective,” with respect to a record required or permitted  
34 to be delivered to the Secretary of State for filing under this title,  
35 means effective under subdivision (c) of Section 17702.05.

36 (i) (1) “Electronic transmission by the limited liability  
37 company” means a communication delivered by any of the  
38 following means:

39 (A) A facsimile telecommunication or electronic mail when  
40 directed to the facsimile number or electronic mail address,

1   *respectively, for that recipient on record with the limited liability*  
2   *company.*

3    (B) *Posting on an electronic message board or network that the*  
4   *limited liability company has designated for those communications,*  
5   *together with a separate notice to the recipient of the posting,*  
6   *which transmission shall be validly delivered upon the later of the*  
7   *posting or delivery of the separate notice thereof.*

8    (C) *Other means of electronic communication to which both of*  
9   *the following apply:*

10   (i) *The communication is delivered to a recipient who has*  
11   *provided an unrevoked consent to the use of those means of*  
12   *transmission.*

13   (ii) *The communication creates a record that is capable of*  
14   *retention, retrieval, and review, and that may thereafter be*  
15   *rendered into clearly legible tangible form. However, an electronic*  
16   *transmission by a limited liability company to an individual*  
17   *member is not authorized unless, in addition to satisfying the*  
18   *requirements of this section, the transmission satisfies the*  
19   *requirements applicable to consumer consent to electronic records*  
20   *as set forth in the Electronic Signatures in Global and National*  
21   *Commerce Act (15 U.S.C. Sec. 7001(c)(1)).*

22   (2) *“Electronic transmission to the limited liability company”*  
23   *means a communication delivered by any of the following means:*

24    (A) *Facsimile telecommunication or electronic mail when*  
25    *directed to the facsimile number or electronic mail address,*  
26    *respectively, that the limited liability company has provided from*  
27    *time to time to members or managers for sending communications*  
28    *to the limited liability company.*

29    (B) *Posting on an electronic message board or network that the*  
30    *limited liability company has designated for those communications,*  
31    *which transmission shall be validly delivered upon the posting.*

32    (C) *Other means of electronic communication to which both of*  
33    *the following apply:*

34    (i) *The limited liability company has placed in effect reasonable*  
35    *measures to verify that the sender is the member or manager, in*  
36    *person or by proxy, purporting to send the transmission.*

37    (ii) *The communication creates a record that is capable of*  
38    *retention, retrieval, and review, and that may thereafter be*  
39    *rendered into clearly legible tangible form.*

1 (j) “Foreign limited liability company” means an  
2 unincorporated entity formed under the law of a jurisdiction other  
3 than this state and denominated by that law as a limited liability  
4 company.

5 (k) “Limited liability company,” except in the phrase “foreign  
6 limited liability company,” means an entity formed under this title.

7 (l) “Majority of the managers” unless otherwise provided in  
8 the operating agreement, means more than 50 percent of the  
9 interests of managers in current profits of the limited liability  
10 company.

11 (m) “Majority of the members” unless otherwise provided in  
12 the operating agreement, means more than 50 percent of the  
13 membership interests of members in current profits of the limited  
14 liability company.

15 (n) “Manager” means a person that under the operating  
16 agreement of a manager-managed limited liability company is  
17 responsible, alone or in concert with others, for performing the  
18 management functions stated in subdivision (c) of Section  
19 17704.07.

20 (o) “Manager-managed limited liability company” means a  
21 limited liability company that qualifies under subdivision (a) of  
22 Section 17704.07.

23 (p) “Member” means a person that has become a member of a  
24 limited liability company under Section 17704.01 and has not  
25 dissociated under Section 17706.02.

26 (q) “Member-managed limited liability company” means a  
27 limited liability company that is not a manager-managed limited  
28 liability company.

29 (r) “Membership interest” means a member’s rights in the  
30 limited liability company, including the member’s transferrable  
31 interest, any right to vote or participate in management, and any  
32 right to information concerning the business and affairs of the  
33 limited liability company provided by this title.

34 (s) “Operating agreement” means the agreement, whether or  
35 not referred to as an operating agreement and whether oral, in a  
36 record, implied, or in any combination thereof, of all the members  
37 of a limited liability company, including a sole member, concerning  
38 the matters described in subdivision (a) of Section 17701.10. An  
39 operating agreement of a limited liability company having only  
40 one member shall not be unenforceable by reason of there being

1 *only one person who is a party to the operating agreement. The*  
2 *term includes the agreement as amended or restated.*

3 (t) *“Organization” means, whether domestic or foreign, a*  
4 *partnership whether general or limited, limited liability company,*  
5 *association, corporation, professional corporation, professional*  
6 *association, nonprofit corporation, business trust, or statutory*  
7 *business trust having a governing statute.*

8 (u) *“Organizer” means a person that acts under Section*  
9 *17702.01 to form a limited liability company.*

10 (v) *“Person” means an individual, corporation, business trust,*  
11 *estate, trust, partnership, limited liability company, association,*  
12 *joint venture, public corporation, government or governmental*  
13 *subdivision, agency, instrumentality, or any other legal or*  
14 *commercial entity.*

15 (w) *“Principal office” means the principal executive office of*  
16 *a limited liability company or foreign limited liability company,*  
17 *whether or not the office is located in this state.*

18 (x) *“Record” means information that is inscribed on a tangible*  
19 *medium or that is stored in an electronic or other medium and is*  
20 *retrievable in perceivable form.*

21 (y) *“Series” means one or more designated series of assets of*  
22 *a limited liability company established in accordance with Section*  
23 *17712.01.*

24 (z) *“Sign” means, with the present intent to authenticate or*  
25 *adopt a record, either of the following:*

26 (1) *To execute or adopt a tangible symbol.*

27 (2) *To attach to or logically associate with the record an*  
28 *electronic symbol, sound, or process.*

29 (aa) *“State” means a state of the United States, the District of*  
30 *Columbia, Puerto Rico, the United States Virgin Islands, or any*  
31 *territory or insular possession subject to the jurisdiction of the*  
32 *United States.*

33 (ab) *“Transfer” includes an assignment, conveyance, deed, bill*  
34 *of sale, lease, mortgage, security interest, encumbrance, gift, and*  
35 *transfer by operation of law.*

36 (ac) *“Transferable interest” means the right, as originally*  
37 *associated with a person’s capacity as a member, to receive*  
38 *distributions from a limited liability company in accordance with*  
39 *the operating agreement, whether or not the person remains a*  
40 *member or continues to own any part of the right.*

1     (ad) “Transferee” means a person to which all or part of a  
2 transferable interest has been transferred, whether or not the  
3 transferor is a member.

4     17701.03. (a) A person knows a fact when either of the  
5 following applies:

6         (1) The person has actual knowledge of the fact.

7         (2) The person is deemed to know the fact under paragraph (1)  
8 of subdivision (d) or law other than this title.

9     (b) A person has notice of a fact when either of the following  
10 applies:

11         (1) The person has reason to know the fact from all of the facts  
12 known to the person at the time in question.

13         (2) The person is deemed to have notice of the fact under  
14 paragraph (2) of subdivision (d).

15     (c) A person notifies another of a fact by taking steps reasonably  
16 required to inform the other person in ordinary course, whether  
17 or not the other person knows the fact.

18     (d) A person that is not a member is deemed:

19         (1) To know of a limitation on authority to transfer real property  
20 as provided in subdivision (g) of Section 17703.02.

21         (2) To have notice, with respect to a limited liability company,  
22 of all of the following:

23             (A) Dissolution, 90 days after a certificate of dissolution under  
24 subdivision (a) of Section 17707.08 has been filed.

25             (B) Termination, 90 days after a certificate of cancellation under  
26 either Section 17707.02 or subdivision (b) of Section 17707.08  
27 has been filed.

28             (C) Merger or conversion, 90 days after certificate of merger  
29 or conversion under Article 10 (commencing with Section  
30 17710.01) becomes effective.

31     (e) A member’s knowledge, notice, or receipt of a notification  
32 of a fact relating to the limited liability company is not knowledge,  
33 notice, or receipt of a notification of a fact by the limited liability  
34 company solely by reason of the member’s capacity as a member.

35     17701.04. (a) A limited liability company is an entity distinct  
36 from its members.

37     (b) A limited liability company may have any lawful purpose,  
38 regardless of whether for profit, except the banking business, the  
39 business of issuing policies of insurance and assuming insurance  
40 risks, or the trust company business. A domestic or foreign limited

1 liability company may render services that may be lawfully  
2 rendered only pursuant to a license, certificate, or registration  
3 authorized by the Business and Professions Code, the Chiropractic  
4 Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, if the  
5 applicable provisions of the Business and Professions Code, the  
6 Chiropractic Act, the Osteopathic Act, or the Yacht and Ship  
7 Brokers Act authorize a limited liability company to hold that  
8 license, certificate, or registration.

9 (c) A limited liability company has perpetual duration.

10 (d) Notwithstanding subdivision (a) and as specifically provided  
11 in this subdivision, a limited liability company may operate as a  
12 health care service plan licensed pursuant to Chapter 2.2  
13 (commencing with Section 1340) of Division 2 of the Health and  
14 Safety Code if the limited liability company is a subsidiary of a  
15 health care service plan licensed pursuant to those provisions and  
16 the limited liability company is established to serve an existing  
17 line of business of the parent health care service plan.  
18 Notwithstanding any other law, the tort or contract liability of a  
19 limited liability company created to operate as a health care  
20 service plan under this subdivision and its members is not limited  
21 or restricted in any manner because of the limited liability company  
22 status of the health care service plan.

23 (e) Nothing in this title shall be construed to permit a domestic  
24 or foreign limited liability company to render professional services,  
25 as defined in subdivision (a) of Section 13401 and in Section  
26 13401.3, in this state.

27 17701.05. (a) A limited liability company established under  
28 this title has the power and capacity in the limited liability  
29 company's own name to do all of the following:

30 (1) Sue and be sued.

31 (2) Contract.

32 (3) Hold and convey title to assets of the limited liability  
33 company, including real property, personal property, and  
34 intangible property.

35 (4) Grant lien and security interests in the assets of the limited  
36 liability company.

37 (b) A series established under this title has the power and  
38 capacity in the series' own name to do all of the following:

39 (1) Sue and be sued.

40 (2) Contract.

1     (3) *Hold and convey title to assets of the series, including real*  
2 *property, personal property, and intangible property.*

3     (4) *Grant liens and security interests in assets of the series.*

4     17701.06. *The law of this state governs all of the following:*

5     (a) *The internal affairs of a limited liability company.*

6     (b) *The liability of a member as member and a manager as*  
7 *manager for the debts, obligations, or other liabilities of a limited*  
8 *liability company.*

9     (c) *The authority of the members and agents of a limited liability*  
10 *company.*

11     (d) *The availability of the assets of a series or the obligations*  
12 *of another series or the limited liability company.*

13     17701.07. (a) *It is the policy of this title and this state to give*  
14 *maximum effect to the principles of freedom of contract and to the*  
15 *enforceability of operating agreements.*

16     (b) *Unless displaced by particular provisions of this title, the*  
17 *principles of law and equity supplement this title.*

18     (c) *Rules that statutes in derogation of the common law are to*  
19 *be strictly construed shall have no application to this title.*

20     (d) *Unless the context otherwise requires, as used in this title,*  
21 *the singular shall include the plural and the plural may refer to*  
22 *only the singular. The use of any gender shall be applicable to all*  
23 *genders.*

24     17701.08. (a) *The name of a limited liability company shall*  
25 *contain the words “limited liability company,” or the abbreviation*  
26 *“L.L.C.” or “LLC.” “Limited” may be abbreviated as “Ltd.,”*  
27 *and “company” may be abbreviated as “Co.”*

28     (b) *Unless authorized by subdivision (c), the name of a limited*  
29 *liability company shall not be a name that the Secretary of State*  
30 *determines is likely to mislead the public and shall be*  
31 *distinguishable in the records of the Secretary of State from all of*  
32 *the following:*

33     (1) *The name of each person that is not an individual and that*  
34 *is incorporated, organized, or authorized to transact business in*  
35 *this state.*

36     (2) *Each name reserved under Section 17701.09.*

37     (c) *A limited liability company may apply to the Secretary of*  
38 *State for authorization to use a name that does not comply with*  
39 *subdivision (b). The Secretary of State shall authorize use of the*

1 name applied for if, as to each noncomplying name, either of the  
2 following applies:

3 (1) The present user, registrant, or owner of the noncomplying  
4 name consents in a signed record to the use and submits an  
5 undertaking in a form satisfactory to the Secretary of State to  
6 change the noncomplying name to a name that complies with  
7 subdivision (b) and is distinguishable in the records of the  
8 Secretary of State from the name applied for.

9 (2) The applicant delivers to the Secretary of State a certified  
10 copy of the final judgment of a court establishing the applicant's  
11 right to use in this state the name applied for.

12 (d) Subject to Section 17708.04, this section applies to a foreign  
13 limited liability company transacting business in this state that  
14 has a certificate of registration to transact business in this state  
15 or that has applied for a certificate of registration.

16 (e) The name shall not include the words bank, trusts, trustee,  
17 incorporated, inc., corporation, or corp. and shall not include the  
18 words insurer or insurance company or any other words suggesting  
19 that it is in the business of issuing policies of insurance and  
20 assuming insurance risks.

21 17701.09. (a) A person may reserve the exclusive use of the  
22 name of a limited liability company, including a fictitious or  
23 assumed name for a foreign limited liability company whose name  
24 is not available, by delivering an application to the Secretary of  
25 State for filing. The application shall state the name and address  
26 of the applicant and the name proposed to be reserved. If the  
27 Secretary of State finds that the name applied for is available, it  
28 shall be reserved for the applicant's exclusive use for up to 60  
29 days. The Secretary of State shall not issue certificates reserving  
30 the same name for two or more consecutive 60-day periods to the  
31 same applicant or for the use or benefit of the same person; nor  
32 shall consecutive reservations be made by or for the use or benefit  
33 of the same person for a name so similar as to fall within the  
34 prohibitions of subdivision (b) of Section 17701.08.

35 (b) The owner of a name reserved for a limited liability company  
36 may transfer the reservation to another person by delivering to  
37 the Secretary of State for filing a signed notice of the transfer  
38 which states the name and address of the transferee.

39 17701.10. (a) Except as otherwise provided in subdivisions  
40 (b) and (c), the operating agreement governs all of the following:

1     (1) *Relations among the members as members and between the*  
2 *members and the limited liability company.*

3     (2) *The rights and duties under this title of a person in the*  
4 *capacity of manager.*

5     (3) *The activities of the limited liability company and the conduct*  
6 *of those activities.*

7     (4) *The means and conditions for amending the operating*  
8 *agreement.*

9     (b) *To the extent the operating agreement does not otherwise*  
10 *provide for a matter described in subdivision (a), this title governs*  
11 *the matter.*

12     (c) *An operating agreement shall not do any of the following:*

13         (1) *Vary a limited liability company's capacity, or the capacity*  
14 *of a series of a limited liability company under Section 17701.05*  
15 *to sue and be sued in its own name.*

16         (2) *Vary the law applicable under Section 17701.06.*

17         (3) *Vary the power of the court under Section 17702.04.*

18         (4) *Subject to subdivisions (d) to (g), inclusive, eliminate the*  
19 *duty of loyalty, the duty of care, or any other fiduciary duty.*

20         (5) *Subject to subdivisions (d) to (g), inclusive, eliminate the*  
21 *contractual obligation of good faith and fair dealing under*  
22 *subdivision (d) of Section 17704.09.*

23         (6) *Unreasonably restrict the duties and rights stated in Section*  
24 *17704.10.*

25         (7) *Vary the power of a court to decree dissolution in the*  
26 *circumstances specified in subdivision (a) of Section 17707.03 or*  
27 *the provisions for avoidance of dissolution in subdivision (c) of*  
28 *Section 17707.03.*

29         (8) *Except as stated herein, vary the requirements of Sections*  
30 *17707.04 to 17707.08, inclusive.*

31         (9) *Unreasonably restrict the right of a member to maintain an*  
32 *action under Article 9 (commencing with Section 17709.01).*

33         (10) *Restrict the right to approve a merger, conversion, or*  
34 *domestication under Section 17710.14 to a member that will have*  
35 *personal liability with respect to a surviving, converted, or*  
36 *domesticated organization.*

37         (11) *Except as otherwise provided in subdivision (b) of Section*  
38 *17701.12, restrict the rights under this title of a person other than*  
39 *a member or manager.*

1     (12) Vary any provision under Article 10 (commencing with  
2     Section 17710.01).

3     (13) Vary any provision under Article 12 (commencing with  
4     Section 17712.01).

5     (14) Eliminate the duty of loyalty under subdivision (b) of  
6     Section 17704.09, but the operating agreement may do any of the  
7     following:

8         (A) Identify specific types or categories of activities that do not  
9         violate the duty of loyalty, if not manifestly unreasonable.

10        (B) Specify the number or percentage of members that may  
11        authorize or ratify, after full disclosure to all members of all  
12        material facts, a specific act or transaction that otherwise would  
13        violate the duty of loyalty.

14     (15) Unreasonably reduce the duty of care under subdivision  
15     (c) of Section 17704.09.

16     (16) Eliminate the obligation of good faith and fair dealing  
17     under subdivision (d) of Section 17704.09, but the operating  
18     agreement may prescribe the standards by which the performance  
19     of the obligation is to be measured, if the standards are not  
20     manifestly unreasonable.

21     (d) To the extent the operating agreement of a member-managed  
22     limited liability company expressly relieves a member of a  
23     responsibility that the member would otherwise have under this  
24     title and imposes the responsibility on one or more other members,  
25     the operating agreement may, to the benefit of the member that  
26     the operating agreement relieves of the responsibility, also  
27     eliminate or limit any fiduciary duty that would have pertained to  
28     the responsibility.

29     (e) The operating agreement may alter or eliminate the  
30     indemnification for a member or manager provided by subdivision  
31     (a) of Section 17704.08 and may eliminate or limit a member or  
32     manager's liability to the limited liability company and members  
33     for money damages, except for the following:

34         (1) Breach of the duty of loyalty.

35         (2) A financial benefit received by the member or manager to  
36         which the member or manager is not entitled.

37         (3) A breach of a duty under Section 17704.06.

38         (4) Intentional infliction of harm on the limited liability company  
39         or a member.

40         (5) An intentional violation of criminal law.

1     (f) A court shall decide any claim under subdivision (d) that a  
2     term of an operating agreement is manifestly unreasonable.

3     (1) The court shall make its determination as of the time the  
4     challenged term became part of the operating agreement and by  
5     considering only circumstances existing at that time.

6     (2) The court may invalidate the term only if, in light of the  
7     purposes and activities of the limited liability company, it is readily  
8     apparent that either of the following apply:

9     (A) The objective of the term is unreasonable.

10    (B) The term is an unreasonable means to achieve the  
11    provision's objective.

12    (g) An operating agreement may provide that:

13    (1) A member or transferee that fails to perform in accordance  
14    with, or to comply with the terms and conditions of, the operating  
15    agreement shall be subject to specified penalties or specified  
16    consequences.

17    (2) At the time or upon the happening of events specified in the  
18    operating agreement, a member or transferee may be subject to  
19    specified penalties or specified consequences. The penalty or  
20    consequence may include and take the form of reducing or  
21    eliminating the defaulting member's or transferee's proportionate  
22    interest in a limited liability company, subordinating the member's  
23    or transferee's membership interest to that of nondefaulting  
24    members or transferees, forcing a sale of that membership interest,  
25    forfeiting the defaulting member's or transferee's membership  
26    interest, the lending by other members or transferees of the amount  
27    necessary to meet the defaulting member's or transferee's  
28    commitment, a fixing of the value of the defaulting member's or  
29    transferee's membership interest by appraisal or by formula and  
30    redemption or sale of the membership interest at that value, or  
31    other penalty or consequence.

32    17701.11. (a) A limited liability company is bound by and may  
33    enforce the operating agreement, whether or not the limited  
34    liability company has itself manifested assent to the operating  
35    agreement.

36    (b) A person that becomes a member of a limited liability  
37    company is deemed to assent to the operating agreement.

38    (c) Two or more persons intending to become the initial  
39    members of a limited liability company may make an agreement  
40    providing that upon the formation of the limited liability company

1 *the agreement will become the operating agreement. One person*  
2 *intending to become the initial member of a limited liability*  
3 *company may assent to terms providing that upon the formation*  
4 *of the limited liability company the terms will become the operating*  
5 *agreement.*

6 *17701.12. (a) An operating agreement may specify that its*  
7 *amendment requires the approval of a person that is not a party*  
8 *to the operating agreement or the satisfaction of a condition. An*  
9 *amendment is ineffective if its adoption does not include the*  
10 *required approval or satisfy the specified condition.*

11 *(b) The obligations of a limited liability company and its*  
12 *members to a person in the person's capacity as a transferee or*  
13 *dissociated member are governed by the operating agreement.*  
14 *Subject only to any court order issued under paragraph (2) of*  
15 *subdivision (b) of Section 17705.03 to effectuate a charging order,*  
16 *an amendment to the operating agreement made after a person*  
17 *becomes a transferee or dissociated member is effective with*  
18 *regard to any debt, obligation, or other liability of the limited*  
19 *liability company or its members to the person in the person's*  
20 *capacity as a transferee or dissociated member.*

21 *(c) If a record that has been delivered by a limited liability*  
22 *company to the Secretary of State for filing and has become*  
23 *effective under this title contains a provision that would be*  
24 *ineffective under subdivision (c) of Section 17701.10 if contained*  
25 *in the operating agreement, the provision is likewise ineffective in*  
26 *the record.*

27 *(d) Subject to subdivision (c), if a record that has been delivered*  
28 *by a limited liability company to the Secretary of State for filing*  
29 *and has become effective under this title conflicts with a provision*  
30 *of the operating agreement both of the following apply:*

31 *(1) The operating agreement prevails as to members, dissociated*  
32 *members, transferees, and managers.*

33 *(2) The record prevails as to other persons to the extent they*  
34 *reasonably rely on the record.*

35 *17701.13. (a) A limited liability company shall designate and*  
36 *continuously maintain in this state both of the following:*

37 *(1) An office, which need not be a place of its activity in this*  
38 *state.*

39 *(2) An agent for service of process.*

1     ***(b) A foreign limited liability company that has a certificate of***  
2 ***registration under Section 17708.02 shall designate and***  
3 ***continuously maintain in this state an agent for service of process.***

4     ***(c) An agent for service of process of a limited liability company***  
5 ***or foreign limited liability company shall be an individual who is***  
6 ***a resident of this state or other person with authority to transact***  
7 ***business in this state, or if the designated person is a corporation,***  
8 ***any person named in the latest certificate of the corporate agent***  
9 ***filed pursuant to Section 1505 at the office of the corporate agent.***

10     ***17701.14. (a) A limited liability company or foreign limited***  
11 ***liability company may change its designated office, its agent for***  
12 ***service of process, or the address of its agent for service of process***  
13 ***by delivering to the Secretary of State for filing a statement of***  
14 ***information as set forth in Section 17702.09.***

15     ***(b) Subject to subdivision (c) of Section 17702.05, a statement***  
16 ***of information is effective when filed by the Secretary of State.***

17     ***17701.15. (a) To resign as an agent for service of process of***  
18 ***a limited liability company or foreign limited liability company,***  
19 ***the agent shall deliver to the Secretary of State for filing a signed***  
20 ***and acknowledged statement of resignation containing the limited***  
21 ***liability company name and stating that the agent is resigning.***

22     ***(b) The Secretary of State shall file a statement of resignation***  
23 ***delivered under subdivision (a) and mail or otherwise provide or***  
24 ***deliver a copy to the designated office of the limited liability***  
25 ***company or foreign limited liability company and another copy***  
26 ***to the principal office of the limited liability company if the mailing***  
27 ***address of the principal office appears in the records of the***  
28 ***Secretary of State and is different from the mailing address of the***  
29 ***designated office.***

30     ***(c) An agency for service of process terminates on the earlier***  
31 ***of the following:***

32     ***(1) The 31st day after the Secretary of State files the statement***  
33 ***of resignation.***

34     ***(2) When a record designating a new agent for service of***  
35 ***process is delivered to the Secretary of State for filing on behalf***  
36 ***of the limited liability company and becomes effective.***

37     ***17701.16. (a) An agent for service of process appointed by a***  
38 ***limited liability company or foreign limited liability company is***  
39 ***an agent of the limited liability company for service of any process,***

1 notice, or demand required or permitted by law to be served on  
2 the limited liability company.

3 (b) (1) If an agent for service of process has resigned and has  
4 not been replaced or if the designated agent cannot with reasonable  
5 diligence be found at the address designated for personal delivery  
6 of the process, and it is shown by affidavit to the satisfaction of  
7 the court that process against a limited liability company or foreign  
8 limited liability company cannot be served with reasonable  
9 diligence upon the designated agent by hand in the manner  
10 provided in Section 415.10, subdivision (a) of Section 415.20, or  
11 subdivision (a) of Section 415.30 of the Code of Civil Procedure,  
12 the court may make an order that the service shall be made upon  
13 a domestic limited liability company or upon a registered foreign  
14 limited liability company by delivering by hand to the Secretary  
15 of State, or to any person employed in the Secretary of State's  
16 office in the capacity of assistant or deputy, one copy of the process  
17 for each defendant to be served, together with a copy of the order  
18 authorizing the service. Service in this manner shall be deemed  
19 complete on the 10th day after delivery of the process to the  
20 Secretary of State.

21 (2) Upon receipt of the copy of process and the fee therefor, the  
22 Secretary of State shall give notice of the service of the process to  
23 the limited liability company or foreign limited liability company,  
24 at its principal executive office, by forwarding to that office, by  
25 registered mail with request for return receipt, the copy of the  
26 process.

27 (3) The Secretary of State shall keep a record of all process  
28 served upon the Secretary of State under this title and shall record  
29 therein the time of service and the action taken by the Secretary  
30 of State. A certificate under the Secretary of State's official seal,  
31 certifying to the receipt of process, the giving of notice to the  
32 limited liability company or foreign limited liability company, and  
33 the forwarding of the process pursuant to this section, shall be  
34 competent and prima facie evidence of the service of process.

35 (c) Service of any process, notice, or demand on the Secretary  
36 of State as an agent for a limited liability company or foreign  
37 limited liability company may be made by delivering to the  
38 Secretary of State duplicate copies of the process, notice, or  
39 demand. If a process, notice, or demand is served on the Secretary  
40 of State, the Secretary of State shall forward one of the copies by

1 registered or certified mail, return receipt requested, to the limited  
2 liability company at its designated office.

3 (d) Service is effected under subdivision (c) at the earliest of  
4 the following:

5 (1) The date the limited liability company or foreign limited  
6 liability company receives the process, notice, or demand.

7 (2) The date shown on the return receipt, if signed on behalf of  
8 the limited liability company.

9 (3) Five days after the process, notice, or demand is deposited  
10 with the United States Postal Service, if correctly addressed and  
11 with sufficient postage.

12 (e) The Secretary of State shall keep a record of each process,  
13 notice, and demand served pursuant to this section and record the  
14 time of, and the action taken regarding, the service.

15 (f) This section does not affect the right to serve process, notice,  
16 or demand in any other manner provided by law.

17 17701.17. (a) A member may, in a written operating agreement  
18 or other writing, consent to be subject to the nonexclusive  
19 jurisdiction of the courts of a specified jurisdiction, or the exclusive  
20 jurisdiction of the courts of this state.

21 (b) If a member desires to use the arbitration process, that  
22 member may, in a written operating agreement or other writing,  
23 consent to be nonexclusively subject to arbitration in a specified  
24 state, or to be exclusively subject to arbitration in this state.

25 (c) Along with this consent to the jurisdiction of courts or  
26 arbitration, a member may consent to be served with legal process  
27 in the manner prescribed in the operating agreement or other  
28 writing.

29  
30 *Article 2. Formation: Articles of Organization and Other Filings*

31  
32 17702.01. (a) One or more persons may act as organizers to  
33 form a limited liability company by signing and delivering to the  
34 Secretary of State for filing articles of organization on a form  
35 prescribed by the Secretary of State.

36 (b) Articles of organization shall state all of the following:

37 (1) The name of the limited liability company, which shall  
38 comply with Section 17701.08.

1     (2) *The street and mailing addresses of the initial designated*  
2 *office and the name and the street and mailing addresses of the*  
3 *initial agent for service of process of the limited liability company.*

4     (3) *If the limited liability company will have one or more*  
5 *designated series of assets subject to limitations on liabilities, a*  
6 *statement to that effect.*

7     (c) *Subject to subdivision (c) of Section 17701.12, articles of*  
8 *organization may also contain statements as to matters other than*  
9 *those required by subdivision (b).*

10    (d) *A limited liability company is formed when the Secretary of*  
11 *State has filed the articles of organization and the limited liability*  
12 *company has at least one member.*

13    (e) *Except in a proceeding by this state to dissolve a limited*  
14 *liability company, the filing of the articles of organization by the*  
15 *Secretary of State is conclusive proof that the organizer satisfied*  
16 *all conditions to the formation of a limited liability company.*

17    17702.02. (a) *The articles of organization may be amended*  
18 *or restated at any time.*

19    (b) *To amend its articles of organization, a limited liability*  
20 *company shall deliver to the Secretary of State for filing an*  
21 *amendment stating all of the following:*

22       (1) *The name of the limited liability company.*

23       (2) *The date of filing of its articles of organization.*

24       (3) *The changes the amendment makes to the articles as most*  
25 *recently amended or restated.*

26    (c) *To restate its articles of organization, a limited liability*  
27 *company shall deliver to the Secretary of State for filing a*  
28 *restatement, designated as such in its heading, stating, as*  
29 *applicable, the following:*

30       (1) *In the heading or an introductory paragraph, the limited*  
31 *liability company's present name and the date of the filing of the*  
32 *limited liability company's initial articles of organization.*

33       (2) *If the limited liability company's name has been changed*  
34 *at any time since the limited liability company's formation, each*  
35 *of the limited liability company's former names.*

36       (3) *The changes the restatement makes to the articles as most*  
37 *recently amended or restated.*

38    (d) *Subject to subdivision (c) of Section 17701.12 and*  
39 *subdivision (c) of Section 17702.05, an amendment to or*

1 *restatement of the articles of organization is effective when filed*  
2 *by the Secretary of State.*

3 *(e) If a member of a member-managed limited liability company,*  
4 *or a manager of a manager-managed limited liability company,*  
5 *knows that any information in a filed articles of organization was*  
6 *inaccurate when the articles were filed or has become inaccurate*  
7 *owing to changed circumstances, the member or manager shall*  
8 *promptly do the following:*

9 *(1) Cause the articles to be amended.*

10 *(2) If appropriate, deliver to the Secretary of State for filing a*  
11 *statement of information under Section 17701.14 or a statement*  
12 *of correction under Section 17702.06.*

13 *17702.03. (a) A record delivered to the Secretary of State for*  
14 *filing pursuant to this title shall be signed as follows:*

15 *(1) Except as otherwise provided in paragraphs (2) to (4),*  
16 *inclusive, a record signed on behalf of a limited liability company*  
17 *shall be signed by a person authorized by the limited liability*  
18 *company.*

19 *(2) A limited liability company's initial articles of organization*  
20 *shall be signed by at least one person acting as an organizer.*

21 *(3) A notice under paragraph (1) of subdivision (e) of Section*  
22 *17702.01 shall be signed by an organizer.*

23 *(4) A record filed on behalf of a dissolved limited liability*  
24 *company that has no members shall be signed by the person*  
25 *winding up the limited liability company's activities or a person*  
26 *appointed under Section 17707.04 to wind up those activities.*

27 *(5) A statement of cancellation under paragraph (2) of*  
28 *subdivision (d) of Section 17702.01 shall be signed by each*  
29 *organizer that signed the initial articles of organization, but a*  
30 *personal representative of a deceased or incompetent organizer*  
31 *may sign in the place of the decedent or incompetent.*

32 *(b) Any record filed under this title may be signed by an agent.*

33 *(c) A limited liability company may record in the office of the*  
34 *county recorder of any county in this state, and county recorders,*  
35 *on request, shall record a certified copy of the limited liability*  
36 *company articles of organization and any exhibit or attachment,*  
37 *or any amendment or correction thereto, that has been filed in the*  
38 *office of the Secretary of State. A foreign limited liability company*  
39 *may record in the office of the county recorder of any county in*  
40 *the state a certified copy of the limited liability company certificate*

1 of registration, or any amendment thereto, that has been filed in  
2 the office of the Secretary of State. The recording shall create a  
3 conclusive presumption in favor of any bona fide purchaser or  
4 encumbrancer for value of the limited liability company real  
5 property located in the county in which the certified copy has been  
6 recorded, of the statements contained therein.

7 (d) If the Secretary of State determines that an instrument  
8 submitted for filing or otherwise submitted does not conform to  
9 the law and returns it to the person submitting it, the instrument  
10 may be resubmitted accompanied by a written opinion of a member  
11 of the State Bar of California submitting the instrument or  
12 representing the person submitting it, to the effect that the specific  
13 provisions of the instrument objected to by the Secretary of State  
14 do conform to law and stating the points and authorities upon  
15 which the opinion is based. The Secretary of State shall rely, with  
16 respect to any disputed point of law, other than the application of  
17 Sections 17701.08, 17701.09, 17708.02, and 17708.03, upon that  
18 written opinion in determining whether the instrument conforms  
19 to law. The date of filing in that case shall be the date the  
20 instrument is received on resubmission.

21 17702.04. (a) If a person required by this title to sign a record  
22 or deliver a record to the Secretary of State for filing under this  
23 title does not do so, any other person that is aggrieved may petition  
24 the superior court to order any of the following:

25 (1) The person to sign the record.  
26 (2) The person to deliver the record to the Secretary of State  
27 for filing.

28 (3) The Secretary of State to file the record unsigned.

29 (b) If a petitioner under subdivision (a) is not the limited liability  
30 company or foreign limited liability company to which the record  
31 pertains, the petitioner shall make the limited liability company a  
32 party to the action.

33 17702.05. (a) A record authorized or required to be delivered  
34 to the Secretary of State for filing under this title shall be captioned  
35 to describe the record's purpose, be in a medium permitted by the  
36 Secretary of State, and be delivered to the Secretary of State. If  
37 the filing fees have been paid, unless the Secretary of State  
38 determines that a record does not comply with the filing  
39 requirements of this title, the Secretary of State shall file the record

1 *and send a copy of the filed record and a receipt for the fees to*  
2 *the person on whose behalf the record was filed.*

3 *(b) Upon request and payment of the requisite fee, the Secretary*  
4 *of State shall send to the requester a certified copy of a requested*  
5 *record.*

6 *(c) Except as otherwise provided in Sections 17701.15 and*  
7 *17702.06, a record delivered to the Secretary of State for filing*  
8 *under this title may specify a delayed effective date. Subject to*  
9 *Section 17701.15, paragraph (1) of subdivision (d) of Section*  
10 *17702.01, and Section 17702.06, a record filed by the Secretary*  
11 *of State is effective as follows:*

12 *(1) If the record does not specify a delayed effective date, on*  
13 *the date the record is filed as evidenced by the Secretary of State's*  
14 *endorsement of the date on the record.*

15 *(2) If the record specifies a delayed effective date, on the earlier*  
16 *of the following:*

17 *(A) The specified date.*

18 *(B) The 90th day after the record is filed.*

19 *17702.06. (a) A limited liability company or foreign limited*  
20 *liability company may deliver to the Secretary of State for filing*  
21 *a certificate of correction on a form prescribed by the Secretary*  
22 *of State to correct a record previously delivered by the limited*  
23 *liability company to the Secretary of State and filed by the*  
24 *Secretary of State, if at the time of filing the record contained*  
25 *inaccurate information or was defectively signed.*

26 *(b) A certificate of correction under subdivision (a) may not*  
27 *state a delayed effective date and shall do all of the following:*

28 *(1) Describe the record to be corrected, including its filing date,*  
29 *or attach a copy of the record as filed.*

30 *(2) Specify the inaccurate information and the reason it is*  
31 *inaccurate or the manner in which the signing was defective.*

32 *(3) Correct the defective signature or inaccurate information.*

33 *(c) When filed by the Secretary of State, a certificate of*  
34 *correction under subdivision (a) is effective retroactively as of the*  
35 *effective date of the record the certificate corrects, but the*  
36 *statement is effective when filed:*

37 *(1) For the purposes of subdivision (d) of Section 17701.03.*

38 *(2) As to persons that previously relied on the uncorrected*  
39 *record and would be adversely affected by the retroactive effect.*

1     17702.07. (a) If a record delivered to the Secretary of State  
2     for filing under this title and filed by the Secretary of State contains  
3     inaccurate information, a person that suffers a loss by reliance on  
4     the information may recover damages for the loss as follows:

5     (1) A person that signed the record, or caused another to sign  
6     it on the person's behalf, and knew the information to be inaccurate  
7     at the time the record was signed.

8     (2) Subject to subdivision (b), a member of a member-managed  
9     limited liability company or the manager of a manager-managed  
10    limited liability company, if all of the following apply:

11    (A) The record was delivered for filing on behalf of the limited  
12    liability company.

13    (B) The member or manager had notice of the inaccuracy for  
14    a reasonably sufficient time before the information was relied upon  
15    so that, before the reliance, the member or manager reasonably  
16    could have done all of the following:

17    (i) Effected an amendment under Section 17702.02.

18    (ii) Filed a petition under Section 17702.04.

19    (iii) Delivered to the Secretary of State for filing a statement of  
20    information under Section 17701.14 or a certificate of correction  
21    under Section 17702.06.

22    (b) To the extent that the operating agreement of a  
23    member-managed limited liability company expressly relieves a  
24    member of responsibility for maintaining the accuracy of  
25    information contained in records delivered on behalf of the limited  
26    liability company to the Secretary of State for filing under this title  
27    and imposes that responsibility on one or more other members,  
28    the liability stated in paragraph (2) of subdivision (a) applies to  
29    those other members and not to the member that the operating  
30    agreement relieves of the responsibility.

31    (c) An individual who signs a record authorized or required to  
32    be filed under this title affirms under penalty of perjury that the  
33    information stated in the record is accurate.

34    17702.08. The Secretary of State, upon request and payment  
35    of the requisite fee, shall furnish to any person a certificate of  
36    status for a limited liability company if the records filed in the  
37    office of the Secretary of State show that the limited liability  
38    company has been formed under Section 17702.01 and the  
39    Secretary of State has not filed a certificate of dissolution under  
40    Section 17707.08 pertaining to the limited liability company.

1 17702.09. (a) Every limited liability company and every  
2 foreign limited liability company registered to transact intrastate  
3 business in this state shall deliver to the Secretary of State for  
4 filing within 90 days after the filing of its original articles of  
5 organization and biennially thereafter during the applicable filing  
6 period, on a form prescribed by the Secretary of State, a statement  
7 of information containing:

8 (1) The name of the limited liability company and the Secretary  
9 of State's file number and, in the case of a foreign limited liability  
10 company, the state under the laws of which it is organized.

11 (2) The name and address of the agent in this state for service  
12 of process required to be maintained pursuant to Section 17701.13.  
13 If a corporate agent is designated, only the name of the agent shall  
14 be set forth.

15 (3) The street address of its principal executive office and, in  
16 the case of a domestic limited liability company, of the office  
17 required to be maintained pursuant to Section 17701.13.

18 (4) The mailing address of the limited liability company, if  
19 different from the street address of its principle executive office.

20 (5) The name and complete business or residence addresses of  
21 any manager or managers and the chief executive officer, if any,  
22 appointed or elected in accordance with the articles of organization  
23 or operating agreement or, if no manager has been so elected or  
24 appointed, the name and business or residence address of each  
25 member.

26 (6) If the limited liability company chooses to receive renewal  
27 notices and any other notifications from the Secretary of State by  
28 electronic mail instead of by United States mail, the limited liability  
29 company shall include a valid electronic mail address for the  
30 limited liability company or for the limited liability company's  
31 designee to receive those notices.

32 (7) The general type of business that constitutes the principal  
33 business activity or the limited liability company, such as, for  
34 example, manufacture of aircraft, wholesale liquor distributor, or  
35 retail department store.

36 (b) If there has been no change in the information contained in  
37 the last filed statement of information of the limited liability  
38 company on file in the office of Secretary of State, the limited  
39 liability company may, in lieu of filing the statement of information  
40 required by subdivision (a), advise the Secretary of State, on a

1 *form prescribed by the Secretary of State, that no changes in the*  
2 *required information have occurred during the applicable filing*  
3 *period.*

4 *(c) For purposes of this section, the applicable filing period for*  
5 *a limited liability company shall be the calendar month during*  
6 *which its original articles of organization was filed or, in the case*  
7 *of a foreign limited liability company, the month during which its*  
8 *application for registration was filed, and the immediately*  
9 *preceding five calendar months. The Secretary of State shall*  
10 *provide a notice to each limited liability company to comply with*  
11 *this section approximately three months prior to the close of the*  
12 *applicable filing period. The notice shall state the due date for*  
13 *compliance and shall be sent to the last address of the limited*  
14 *liability company according to the records of the Secretary of State*  
15 *or to the last electronic mail address according to the records of*  
16 *the Secretary of State if the limited liability company has elected*  
17 *to receive notices from the Secretary of State by electronic mail.*  
18 *The failure of the limited liability company to receive the notice*  
19 *shall not exempt the limited liability company from complying with*  
20 *this section.*

21 *(d) Whenever any of the information required by subdivision*  
22 *(a) changes, other than the name and address of the agent for*  
23 *service of process, the limited liability company may file a current*  
24 *statement containing all the information required by subdivision*  
25 *(a). When changing its agent for service of process or when the*  
26 *address of the agent changes, the limited liability company shall*  
27 *file a current statement containing all the information required*  
28 *by subdivision (a). Whenever any statement is filed pursuant to*  
29 *this section changing the name and address of the agent for service*  
30 *of process, that statement supersedes any previously filed statement*  
31 *pursuant to this section, the statement in the original articles of*  
32 *organization, and the statement in any restated articles of*  
33 *organization that have been filed, or in the case of a foreign limited*  
34 *liability company, in the application for registration. Whenever*  
35 *restated articles of organization are filed, the statement therein,*  
36 *if any, of the name and address of the agent for service of process*  
37 *supersedes any previously filed statement pursuant to this section.*

38 *(e) If a statement of information delivered to the Secretary of*  
39 *State for filing under this section does not contain the information*  
40 *required by subdivision (a), the Secretary of State shall promptly*

1 *return the statement of information to the reporting limited liability*  
2 *company or foreign limited liability company for correction.*

3 *(f) The Secretary of State may destroy or otherwise dispose of*  
4 *any statement filed pursuant to this section after it has been*  
5 *superseded by the filing of a new statement.*

6 *17702.10. An instrument shall be deemed filed, and the date*  
7 *of filing endorsed thereon, upon receipt by the Secretary of State*  
8 *of any instrument accompanied by the fee prescribed by the*  
9 *Secretary of State. The date of filing shall be the date the*  
10 *instrument is received by the Secretary of State unless the*  
11 *instrument is withheld from filing for a period of time not to exceed*  
12 *90 days pursuant to a request by the party submitting it for filing*  
13 *or unless, in the judgment of the Secretary of State, the filing is*  
14 *intended to be coordinated with the filing of some other document*  
15 *that cannot be filed. The Secretary of State shall file a document*  
16 *as of any requested future date not more than 90 days after its*  
17 *receipt, including a Saturday, Sunday, or legal holiday, if that*  
18 *document is received in the office of the Secretary of State at least*  
19 *one business day prior to the requested date of filing. Upon receipt*  
20 *and after filing of any document under this title, the Secretary of*  
21 *State may microfilm or reproduce by other techniques any filings*  
22 *or documents and destroy the original filing or document. The*  
23 *microfilm or other reproduction of any document under the*  
24 *provision of this section shall be admissible in any court of law.*

25  
26 *Article 3. Relations of Members and Managers to Persons*  
27 *Dealing with a Limited Liability Company*  
28

29 *17703.01. (a) A member is not an agent of a limited liability*  
30 *company solely by reason of being a member.*

31 *(b) A person's status as a member does not prevent or restrict*  
32 *law other than this title from imposing liability on a limited liability*  
33 *company because of the person's conduct.*

34 *17703.04. (a) All of the following apply to debts, obligations,*  
35 *or other liabilities of a limited liability company, or a series of a*  
36 *limited liability company, whether arising in contract, tort, or*  
37 *otherwise:*

38 *(1) They are solely the debts, obligations, or other liabilities of*  
39 *the limited liability company, or of the series of a limited liability*  
40 *company to which the debts, obligations, or other liabilities relate.*

1     (2) *They do not become the debts, obligations, or other liabilities*  
2 *of a member or manager or any other series solely by reason of*  
3 *the member acting as a member or manager acting as a manager*  
4 *for the limited liability company or a series of a limited liability*  
5 *company.*

6     (b) *A member of a limited liability company or a series of a*  
7 *limited liability company shall be subject to liability under the*  
8 *common law governing alter ego liability, and shall also be*  
9 *personally liable under a judgment of a court or for any debt,*  
10 *obligation, or liability of the limited liability company or a series*  
11 *of a limited liability company, whether that liability or obligation*  
12 *arises in contract, tort, or otherwise, under the same or similar*  
13 *circumstances and to the same extent as a shareholder of a*  
14 *corporation may be personally liable for any debt, obligation, or*  
15 *liability of the corporation; except that the failure to hold meetings*  
16 *of members or managers or the failure to observe formalities*  
17 *pertaining to the calling or conduct of meetings shall not be*  
18 *considered a factor tending to establish that a member or the*  
19 *members have alter ego or personal liability for any debt,*  
20 *obligation, or liability of the limited liability company or a series*  
21 *of a limited liability company where the articles of organization*  
22 *or operating agreement do not expressly require the holding of*  
23 *meetings of members or managers.*

24     (c) *Nothing in this section shall be construed to affect the*  
25 *liability of a member of a limited liability company or a series of*  
26 *a limited liability company to third parties for the member's*  
27 *participation in tortious conduct, or pursuant to the terms of a*  
28 *written guarantee or other contractual obligation entered into by*  
29 *the member, other than an operating agreement.*

30     (d) *A limited liability company or foreign limited liability*  
31 *company or a series of a limited liability company shall carry*  
32 *insurance or provide an undertaking to the same extent and in the*  
33 *same amount as is required by any law, rule, or regulation of this*  
34 *state that would be applicable to the limited liability company or*  
35 *foreign limited liability company or a series of a limited liability*  
36 *company were it a corporation organized and existing or duly*  
37 *qualified for the transaction of intrastate business under the*  
38 *General Corporation Law.*

39     (e) *Notwithstanding subdivision (a), a member of a limited*  
40 *liability company or a series of a limited liability company may*

1 agree to be obligated personally for any or all of the debts,  
2 obligations, and liabilities of the limited liability company or a  
3 series of a limited liability company as long as the agreement to  
4 be so obligated is set forth in the articles of organization or in a  
5 written operating agreement that specifically references this  
6 subdivision.

7  
8 *Article 4. Relations of Members to Each Other and to Limited*  
9 *Liability Company*

10  
11 *17704.01. (a) If a limited liability company is to have only*  
12 *one member upon formation, the person becomes a member as*  
13 *agreed by that person and the organizer of the limited liability*  
14 *company. That person and the organizer may be, but need not be,*  
15 *different persons. If different, the organizer acts on behalf of the*  
16 *initial member.*

17 *(b) If a limited liability company, or a series thereof, is to have*  
18 *more than one member upon formation, those persons become*  
19 *members as agreed by the persons before the formation of the*  
20 *limited liability company. The organizer acts on behalf of the*  
21 *persons in forming the limited liability company and may be, but*  
22 *need not be, one of the persons.*

23 *(c) After formation of a limited liability company, a person*  
24 *becomes a member as follows:*

25 *(1) As provided in the operating agreement.*

26 *(2) As the result of a transaction effective under Article 10*  
27 *(commencing with Section 17710.01).*

28 *(3) With the consent of all the members.*

29 *(4) If, within 90 consecutive days after the limited liability*  
30 *company ceases to have any members, the last person to have been*  
31 *a member, or the legal representative of that person, designates*  
32 *a person to become a member, and the designated person consents*  
33 *to become a member.*

34 *(d) A person may become a member without acquiring a*  
35 *transferable interest and without making or being obligated to*  
36 *make a contribution to the limited liability company.*

37 *(e) A person may be admitted as the sole member without*  
38 *acquiring a membership interest and without making or being*  
39 *obligated to make a contribution to the limited liability company.*

1 17704.02. A contribution may consist of tangible or intangible  
2 property or other benefit to a limited liability company, or a series  
3 of a limited liability company, including money, services  
4 performed, promissory notes, other agreements to contribute money  
5 or property, and contracts for services to be performed.

6 17704.03. (a) A person's obligation to make a contribution  
7 to a limited liability company, or a series of a limited liability  
8 company, is not excused by the person's death, disability, or other  
9 inability to perform personally. If a person does not make a  
10 required contribution, the person or the person's estate is obligated  
11 to contribute money equal to the value of the part of the  
12 contribution that has not been made, at the option of the limited  
13 liability company or a series of a limited liability company.

14 (b) The obligation of a member to make a contribution to a  
15 limited liability company may be compromised only by consent of  
16 all the members. A conditional obligation of a member to make a  
17 contribution to a limited liability company shall not be enforced  
18 unless the conditions of the obligation have been satisfied or  
19 waived as to or by that member. Conditional obligations include  
20 contributions payable upon a discretionary call of a limited liability  
21 company before the time the call occurs.

22 (c) The obligation of a member of a series to make a contribution  
23 to the series may be compromised only by consent of all the  
24 members of that series. A conditional obligation of a member to  
25 make a contribution to a series shall not be enforced unless the  
26 conditions of the obligation have been satisfied or waived as to or  
27 by that member. Conditional obligations include contributions  
28 payable upon a discretionary call of that series before the time  
29 the call occurs.

30 (d) Subdivision (b) shall not apply to a member's obligation to  
31 make a contribution to a series of a limited liability company.

32 (e) A creditor of a limited liability company or a series of a  
33 limited liability company that extends credit or otherwise acts in  
34 reliance on an obligation described in subdivision (a) may enforce  
35 the obligation.

36 17704.04. (a) Any distributions made by a limited liability  
37 company before its dissolution and winding up shall be among the  
38 members in accordance with the operating agreement. If the  
39 operating agreement does not otherwise provide, distributions  
40 shall be on the basis of the value, as stated in the required records

1 *when the limited liability company decides to make the distribution,*  
2 *of the contributions the limited liability company has received*  
3 *from each member, except to the extent necessary to comply with*  
4 *any transfer effective under Section 17705.02 and any charging*  
5 *order in effect under Section 17705.03.*

6 *(b) A person has a right to a distribution before the dissolution*  
7 *and winding up of a limited liability company only if the limited*  
8 *liability company decides to make an interim distribution. A*  
9 *person's dissociation does not entitle the person to a distribution.*

10 *(c) A person does not have a right to demand or receive a*  
11 *distribution from a limited liability company in any form other*  
12 *than money. A limited liability company may distribute an asset*  
13 *in kind if each part of the asset is fungible with each other part*  
14 *and each person receives a percentage of the asset equal in value*  
15 *to the person's share of distributions.*

16 *(d) If a member or transferee becomes entitled to receive a*  
17 *distribution, the member or transferee has the status of, and is*  
18 *entitled to all remedies available to, a creditor of the limited*  
19 *liability company with respect to the distribution.*

20 *(e) (1) All members of a series shall share equally in any*  
21 *distributions made by the series before its dissolution and winding*  
22 *up.*

23 *(2) A member of a series has a right to a distribution before the*  
24 *dissolution and winding up of the series as provided in the*  
25 *operating agreement. A decision of the series to make a distribution*  
26 *before the dissolution and winding up of the series is a decision*  
27 *in the ordinary course of activities of the series. A member's*  
28 *dissociation from a series with which the member is associated*  
29 *does not entitle the dissociated member to a distribution from the*  
30 *series.*

31 *(3) A member of a series does not have a right to demand and*  
32 *receive a distribution from the series in any form other than money.*  
33 *A series may distribute an asset in kind if each member of the*  
34 *series receives a percentage of the asset in proportion to the*  
35 *member's share of distributions from the series.*

36 *(4) If a member of a series becomes entitled to receive a*  
37 *distribution from the series, the member has the status of, and is*  
38 *entitled to all remedies available to, a creditor of the series with*  
39 *respect to the distribution.*

1     (f) Subdivisions (a) through (d) shall not apply to a distribution  
2     made by a series.

3     17704.05. (a) A limited liability company shall not make a  
4     distribution if after the distribution either of the following applies:

5     (1) The limited liability company would not be able to pay its  
6     debts as they become due in the ordinary course of the limited  
7     liability company's activities.

8     (2) The limited liability company's total assets would be less  
9     than the sum of its total liabilities plus the amount that would be  
10    needed, if the limited liability company were to be dissolved, wound  
11    up, and terminated at the time of the distribution, to satisfy the  
12    preferential rights upon dissolution, winding up, and termination  
13    of members whose preferential rights are superior to those of  
14    persons receiving the distribution.

15    (b) A limited liability company may base a determination that  
16    a distribution is not prohibited under subdivision (a) on financial  
17    statements prepared on the basis of accounting practices and  
18    principles that are reasonable in the circumstances or on a fair  
19    valuation or other method that is reasonable under the  
20    circumstances.

21    (c) Except as otherwise provided in subdivision (f), the effect  
22    of a distribution under subdivision (a) is measured as follows:

23    (1) In the case of a distribution by purchase, redemption, or  
24    other acquisition of a transferable interest in the limited liability  
25    company, as of the date money or other property is transferred or  
26    debt incurred by the limited liability company.

27    (2) In all other cases, as of the date the distribution is  
28    authorized, if the payment occurs within 120 days after that date,  
29    or the payment is made, if the payment occurs more than 120 days  
30    after the distribution is authorized.

31    (d) A limited liability company's indebtedness to a member  
32    incurred by reason of a distribution made in accordance with this  
33    section is at parity with the limited liability company's indebtedness  
34    to its general, unsecured creditors.

35    (e) A limited liability company's indebtedness, including  
36    indebtedness issued in connection with or as part of a distribution,  
37    is not a liability for purposes of subdivision (a) if the terms of the  
38    indebtedness provide that payment of principal and interest are  
39    made only to the extent that a distribution could be made to  
40    members under this section.

1     (f) If indebtedness is issued as a distribution, each payment of  
2     principal or interest on the indebtedness is treated as a distribution,  
3     the effect of which is measured on the date the payment is made.

4     (g) In subdivision (a) and subdivision (f) of Section 17701.02,  
5     “distribution” does not include amounts constituting reasonable  
6     compensation for present or past services or reasonable payments  
7     made in the ordinary course of business under a bona fide  
8     retirement plan or other benefits program.

9     (h) (1) A series shall not make a distribution to a member of  
10    the series to the extent that at the time of the distribution, after  
11    giving effect to the distribution, all liabilities of the series, other  
12    than liabilities to members of the series on account of their  
13    membership interests and liabilities for which the recourse of  
14    creditors is limited to specific property of the series, exceed the  
15    fair value of the assets of the series, except that the fair value of  
16    the property that is subject to a liability for which recourse of  
17    creditors is limited shall be included in the assets of the series only  
18    to the extent that the fair value of the property exceeds that liability.

19    (2) A member of a series who receives a distribution in violation  
20    of paragraph (1) or the operating agreement, and who knew at  
21    the time of the distribution that the distribution violated paragraph  
22    (1) or the operating agreement, shall be personally liable to that  
23    series for the amount of the distribution. A member of a series who  
24    receives a distribution in violation of paragraph (1) or the limited  
25    liability company agreement, and who did not know at the time of  
26    the distribution that the distribution violated paragraph (1) or the  
27    operating agreement, shall not be liable for the amount of the  
28    distribution.

29    (3) Subdivision (a) through (g) shall not apply to a distribution  
30    made by a series.

31    17704.06. (a) Except as otherwise provided in subdivision (b)  
32    and paragraph (2) of subdivision (h) of Section 17704.05, if a  
33    member of a member-managed limited liability company or  
34    manager of a manager-managed limited liability company or a  
35    series of limited liability company consents to a distribution made  
36    in violation of Section 17704.05, the member or manager is  
37    personally liable to the limited liability company, or, if applicable,  
38    to the series of the limited liability company making the  
39    distribution, for the amount of the distribution that exceeds the

1 amount that could have been distributed without the violation of  
2 Section 17704.05.

3 (b) To the extent the operating agreement of a member-managed  
4 limited liability company expressly relieves a member of the  
5 authority and responsibility to consent to distributions and imposes  
6 that authority and responsibility on one or more other members,  
7 the liability stated in subdivision (a) applies to the other members  
8 and not the member that the operating agreement relieves of  
9 authority and responsibility.

10 (c) A person that receives a distribution knowing that the  
11 distribution to that person was made in violation of Section  
12 17704.05 is personally liable to the limited liability company but  
13 only to the extent that the distribution received by the person  
14 exceeded the amount that could have been properly paid under  
15 Section 17704.05.

16 (d) A person against which an action is commenced because  
17 the person is liable under subdivision (a) may do all of the  
18 following:

19 (1) Implead any other person that is subject to liability under  
20 subdivision (a) and seek to compel contribution from the person.

21 (2) Implead any person that received a distribution in violation  
22 of subdivision (c) and seek to compel contribution from the person  
23 in the amount the person received in violation of subdivision (c).

24 (e) An action under this section is barred if not commenced  
25 within four years after the distribution.

26 17704.07. (a) A limited liability company is a  
27 member-managed limited liability company unless the operating  
28 agreement does either of the following:

29 (1) Expressly provides that:

30 (A) The limited liability company is or will be  
31 “manager-managed.”

32 (B) The limited liability company is or will be “managed by  
33 managers.”

34 (C) Management of the limited liability company is or will be  
35 “vested in managers.”

36 (2) Includes words of similar import.

37 (b) In a member-managed limited liability company, the  
38 following rules apply:

39 (1) The management and conduct of the limited liability  
40 company are vested in the members.

1     (2) *The management and conduct of a series are vested in the*  
2 *members of that series.*

3     (3) *Paragraph (1) shall not apply to the management and*  
4 *conduct of a series.*

5     (4) *Each member has equal rights in the management and*  
6 *conduct of the limited liability company's activities.*

7     (5) *Each member of a series has equal rights in the management*  
8 *and conduct of the series' activities.*

9     (6) *Paragraph (4) shall not apply to the management and*  
10 *conduct of the series.*

11     (7) *A difference arising among members as to a matter in the*  
12 *ordinary course of the activities of the limited liability company*  
13 *or a series of the limited liability company shall be decided by a*  
14 *majority of the members of the limited liability company or of the*  
15 *series in which the difference among the members has arisen.*

16     (8) *An act outside the ordinary course of the activities of the*  
17 *limited liability company may be undertaken only with the consent*  
18 *of all members.*

19     (9) *An act outside the ordinary course of the activities of a series*  
20 *of the limited liability company may be undertaken only with the*  
21 *consent of all members of that series.*

22     (10) *The operating agreement may be amended only with the*  
23 *consent of all members.*

24     (c) *In a manager-managed limited liability company, the*  
25 *following rules apply:*

26         (1) *Except as otherwise expressly provided in this title, any*  
27 *matter relating to the activities of the limited liability company is*  
28 *decided exclusively by the managers.*

29         (2) *Except as otherwise expressly provided in this title, any*  
30 *matter related to the activity of the series is decided exclusively*  
31 *by the managers of the series.*

32         (3) *Paragraph (1) shall not apply to the activities of a series.*

33         (4) *Each manager has equal rights in the management and*  
34 *conduct of the activities of the limited liability company.*

35         (5) *Each manager of a series has equal rights in the*  
36 *management and conduct of the activity of the series.*

37         (6) *Paragraph (4) shall not apply to the management and*  
38 *conduct of the activity of the series.*

39         (7) *A difference arising among managers as to a matter in the*  
40 *ordinary course of the activities of the limited liability company*

1 *may be decided by a majority of the managers of the limited*  
2 *liability company.*

3 *(8) A difference arising among managers of a series of a limited*  
4 *liability company as to a matter in the ordinary course of the*  
5 *activities of that series shall be decided by a majority of the*  
6 *managers of that series.*

7 *(9) The consent of all members of the limited liability company*  
8 *is required to do any of the following:*

9 *(A) Sell, lease, exchange, or otherwise dispose of all, or*  
10 *substantially all, of the limited liability company's property, with*  
11 *or without the goodwill, outside the ordinary course of the limited*  
12 *liability company's activities.*

13 *(B) Approve a merger or conversion under Article 10*  
14 *(commencing with Section 17710.01).*

15 *(C) Undertake any other act outside the ordinary course of the*  
16 *limited liability company's activities.*

17 *(D) Amend the operating agreement.*

18 *(10) The consent of all members of a series is required to any*  
19 *of the following:*

20 *(A) Sell, lease, exchange, or afterward dispose of all or*  
21 *substantially all, of the series' property, with or without the*  
22 *goodwill, outside the ordinary course of the series activities.*

23 *(B) Approve a merger or conversion of the series under Article*  
24 *10 (commencing with Section 17710.01).*

25 *(C) Undertake any other act outside the ordinary course of the*  
26 *series' activities.*

27 *(D) Amend the operating agreement with respect to the series.*

28 *(11) A manager may be chosen at any time by the consent of a*  
29 *majority of the members and remains a manager until a successor*  
30 *has been chosen, unless the manager at an earlier time resigns,*  
31 *is removed, or dies, or, in the case of a manager that is not an*  
32 *individual, terminates. A manager may be removed at any time by*  
33 *the consent of a majority of the members without notice or cause.*

34 *(12) A manager of a series may be chosen at any time by the*  
35 *consent of a majority of members of that series and remains a*  
36 *manager until a successor has been chosen, unless the manager*  
37 *at an earlier time resigns, is removed, or dies, or in the case of a*  
38 *manager that is not an individual, terminates. A manager of a*  
39 *series may be removed at any time by the consent of a majority of*  
40 *the members of that series without notice or cause.*

1     (13) A person need not be a member to be a manager, but the  
2     dissociation of a member that is also a manager removes the  
3     person as a manager. If a person that is both a manager and a  
4     member ceases to be a manager, that cessation does not by itself  
5     dissociate the person as a member.

6     (14) A person's ceasing to be a manager does not discharge  
7     any debt, obligation, or other liability to the limited liability  
8     company or members which the person incurred while a manager.

9     (d) The dissolution of a limited liability company, or a series  
10    of a limited liability company, does not affect the applicability of  
11    this section. However, a person that wrongfully causes dissolution  
12    of the limited liability company loses the right to participate in  
13    management as a member and a manager.

14    (e) This title does not entitle a member to remuneration for  
15    services performed for a member-managed limited liability  
16    company, except for reasonable compensation for services  
17    rendered in winding up the activities of a limited liability company.

18    (f) Meetings of members may be held at any place, by electronic  
19    video screen communication or by electronic transmission by and  
20    to the limited liability company pursuant to paragraphs (1) and  
21    (2) of subdivision (h) of Section 17701.02, either within or without  
22    this state, selected by the person or persons calling the meeting  
23    or as may be stated in or fixed in accordance with the articles of  
24    organization or a written operating agreement. If no other place  
25    is stated or so fixed, all meetings shall be held at the principal  
26    executive office of the limited liability company. Unless prohibited  
27    by the articles of organization of the limited liability company, if  
28    authorized by the operating agreement, members not physically  
29    present in person or by proxy at a meeting of members may, by  
30    electronic transmission by and to the limited liability company  
31    pursuant to paragraphs (1) and (2) of subdivision (i) of Section  
32    17701.02 or by electronic video screen communication, participate  
33    in a meeting of members, be deemed present in person or by proxy,  
34    and vote at a meeting of members whether that meeting is to be  
35    held at a designated place or in whole or in part by means of  
36    electronic transmission by and to the limited liability company or  
37    by electronic video screen communication, in accordance with  
38    subdivision (l).

39    (g) A meeting of the members may be called by any manager  
40    or by any member or members representing more than 10 percent

1 of the interests of members for the purpose of addressing any  
2 matters on which the members may vote.

3 (h) (1) Whenever members are required or permitted to take  
4 any action at a meeting, a written notice of the meeting shall be  
5 given not less than 10 days nor more than 60 days before the date  
6 of the meeting to each member entitled to vote at the meeting. The  
7 notice shall state the place, date, and hour of the meeting, the  
8 means of electronic transmission by and to the limited liability  
9 company or electronic video screen communication, if any, and  
10 the general nature of the business to be transacted. No other  
11 business may be transacted at that meeting.

12 (2) Any report or any notice of a members' meeting shall be  
13 given personally, by electronic transmission by the limited liability  
14 company, or by mail or other means of written communication,  
15 addressed to the member at the address of the member appearing  
16 on the books of the limited liability company or given by the  
17 member to the limited liability company for the purpose of notice,  
18 or, if no address appears or is given, at the place where the  
19 principal executive office of the limited liability company is located  
20 or by publication at least once in a newspaper of general  
21 circulation in the county in which the principal executive office is  
22 located. The notice or report shall be deemed to have been given  
23 at the time when delivered personally, delivered by electronic  
24 transmission by the limited liability company, deposited in the  
25 mail, or sent by other means of written communication. An affidavit  
26 of mailing or delivered by electronic transmission by the limited  
27 liability company of any notice or report in accordance with this  
28 article, executed by a manager, shall be prima facie evidence of  
29 the giving of the notice or report.

30 (3) If any notice or report addressed to the member at the  
31 address of the member appearing on the books of the limited  
32 liability company is returned to the limited liability company by  
33 the United States Postal Service marked to indicate that the United  
34 States Postal Service is unable to deliver the notice or report to  
35 the member at the address, all future notices or reports shall be  
36 deemed to have been duly given without further mailing if they are  
37 available for the member at the principal executive office of the  
38 limited liability company for a period of one year from the date of  
39 the giving of the notice or report to all other members.

1     (4) Notice given by electronic transmission by the limited  
2     liability company under this subdivision shall be valid only if it  
3     complies with paragraph (1) of subdivision (h) of Section 17701.02.

4     Notwithstanding this condition, notice shall not be given by  
5     electronic transmission by the limited liability company under this  
6     subdivision after either of the following has occurred:

7     (A) The limited liability company is unable to deliver two  
8     consecutive notices to the member by that means.

9     (B) The inability to so deliver the notices to the member becomes  
10    known to the secretary, any assistant secretary, the transfer agent,  
11    or any other person responsible for the giving of the notice.

12    (5) Upon written request to a manager by any person entitled  
13    to call a meeting of members, the manager shall immediately cause  
14    notice to be given to the members entitled to vote that a meeting  
15    will be held at a time requested by the person calling the meeting,  
16    not less than 10 days nor more than 60 days after the receipt of  
17    the request. If the notice is not given within 20 days after receipt  
18    of the request, the person entitled to call the meeting may give the  
19    notice or, upon the application of that person, the superior court  
20    of the county in which the principal executive office of the limited  
21    liability company is located, or if the principal executive office is  
22    not in this state, the county in which the limited liability company's  
23    address in this state is located, shall summarily order the giving  
24    of the notice, after notice to the limited liability company affording  
25    it an opportunity to be heard. The procedure provided in  
26    subdivision (c) of Section 305 shall apply to the application. The  
27    court may issue any order as may be appropriate, including,  
28    without limitation, an order designating the time and place of the  
29    meeting, the record date for determination of members entitled to  
30    vote, and the form of notice.

31    (i) When a members' meeting is adjourned to another time or  
32    place, unless the articles of organization or a written operating  
33    agreement otherwise require and except as provided in this  
34    subdivision, notice need not be given of the adjourned meeting if  
35    the time and place thereof or the means of electronic transmission  
36    by and to the limited liability company or electronic video screen  
37    communication, if any, are announced at the meeting at which the  
38    adjournment is taken. At the adjourned meeting, the limited liability  
39    company may transact any business that may have been transacted  
40    at the original meeting. If the adjournment is for more than 45

1 days, or if after the adjournment a new record date is fixed for the  
2 adjourned meeting, a notice of the adjourned meeting shall be  
3 given to each member of record entitled to vote at the meeting.

4 (j) The actions taken at any meeting of members, however called  
5 and noticed, and wherever held, have the same validity as if taken  
6 at a meeting duly held after regular call and notice, if a quorum  
7 is present either in person or by proxy, and if, either before or  
8 after the meeting, each of the members entitled to vote, not present  
9 in person or by proxy, provides a waiver of notice or consents to  
10 the holding of the meeting or approves the minutes of the meeting  
11 in writing. All waivers, consents, and approvals shall be filed with  
12 the limited liability company records or made a part of the minutes  
13 of the meeting after conversion to the form in which those records  
14 or minutes are kept. Attendance of a person at a meeting shall  
15 constitute a waiver of notice of the meeting, except when the person  
16 objects, at the beginning of the meeting, to the transaction of any  
17 business because the meeting is not lawfully called or convened.  
18 Attendance at a meeting is not a waiver of any right to object to  
19 the consideration of matters required by this title to be included  
20 in the notice but not so included, if the objection is expressly made  
21 at the meeting. Neither the business to be transacted nor the  
22 purpose of any meeting of members need be specified in any written  
23 waiver of notice, unless otherwise provided in the articles of  
24 organization or operating agreement, except as provided in  
25 subdivision (l).

26 (k) Members may participate in a meeting of the limited liability  
27 company through the use of conference telephones or electronic  
28 video screen communication, as long as all members participating  
29 in the meeting can hear one another, or by electronic transmission  
30 by and to the limited liability company pursuant to paragraphs  
31 (1) and (2) of subdivision (h) of Section 17701.02. Participation  
32 in a meeting pursuant to this provision constitutes presence in  
33 person at that meeting.

34 (l) Any action approved at a meeting, other than by unanimous  
35 approval of those entitled to vote, shall be valid only if the general  
36 nature of the proposal so approved was stated in the notice of  
37 meeting or in any written waiver of notice.

38 (m) (1) A majority in interest of the members represented in  
39 person or by proxy shall constitute a quorum at a meeting of  
40 members.

1     (2) *The members present at a duly called or held meeting at*  
2 *which a quorum is present may continue to transact business until*  
3 *adjournment, notwithstanding the loss of a quorum, if any action*  
4 *taken after loss of a quorum, other than adjournment, is approved*  
5 *by the requisite percentage of interests of members specified in*  
6 *this title or in the articles of organization or a written operating*  
7 *agreement.*

8     (3) *In the absence of a quorum, any meeting of members may*  
9 *be adjourned from time to time by the vote of a majority of the*  
10 *interests represented either in person or by proxy, but no other*  
11 *business may be transacted, except as provided in paragraph (2).*

12     (n) (1) *Any action that may be taken at any meeting of the*  
13 *members may be taken without a meeting if a consent in writing,*  
14 *setting forth the action so taken, is signed and delivered to the*  
15 *limited liability company within 60 days of the record date for that*  
16 *action by members having not less than the minimum number of*  
17 *votes that would be necessary to authorize or take that action at*  
18 *a meeting at which all members entitled to vote thereon were*  
19 *present and voted.*

20     (2) *Unless the consents of all members entitled to vote have*  
21 *been solicited in writing, (A) notice of any member approval of an*  
22 *amendment to the articles of organization or operating agreement,*  
23 *a dissolution of the limited liability company as provided in Section*  
24 *17707.01, or a merger of the limited liability company as provided*  
25 *in Section 17710.10, without a meeting by less than unanimous*  
26 *written consent shall be given at least 10 days before the*  
27 *consummation of the action authorized by the approval, and (B)*  
28 *prompt notice shall be given of the taking of any other action*  
29 *approved by members without a meeting by less than unanimous*  
30 *written consent, to those members entitled to vote who have not*  
31 *consented in writing.*

32     (3) *Any member giving a written consent, or the member's*  
33 *proxyholder, may revoke the consent personally or by proxy by a*  
34 *writing received by the limited liability company prior to the time*  
35 *that written consents of members having the minimum number of*  
36 *votes that would be required to authorize the proposed action have*  
37 *been filed with the limited liability company, but may not do so*  
38 *thereafter. This revocation is effective upon its receipt at the office*  
39 *of the limited liability company required to be maintained pursuant*  
40 *to Section 17701.13.*

1     (o) *The use of proxies in connection with this section shall be*  
2 *governed in the same manner as in the case of corporations formed*  
3 *under the General Corporation Law, Division 1 (commencing with*  
4 *Section 100) of Title 1.*

5     (p) *In order that the limited liability company may determine*  
6 *the members of record entitled to notices of any meeting or to vote,*  
7 *or entitled to receive any distribution or to exercise any rights in*  
8 *respect of any other lawful action, a manager, or members*  
9 *representing more than 10 percent of the interests of members,*  
10 *may fix, in advance, a record date, that is not more than 60 days*  
11 *nor less than 10 days prior to the date of the meeting and not more*  
12 *than 60 days prior to any other action. If no record date is fixed*  
13 *the following shall apply:*

14     (1) *The record date for determining members entitled to notice*  
15 *of or to vote at a meeting of members shall be at the close of*  
16 *business on the business day next preceding the day on which*  
17 *notice is given or, if notice is waived, at the close of business on*  
18 *the business day next preceding the day on which the meeting is*  
19 *held.*

20     (2) *The record date for determining members entitled to give*  
21 *consent to limited liability company action in writing without a*  
22 *meeting shall be the day on which the first written consent is given.*

23     (3) *The record date for determining members for any other*  
24 *purpose shall be at the close of business on the day on which the*  
25 *managers adopt the resolution relating thereto, or the 60th day*  
26 *prior to the date of the other action, whichever is later.*

27     (4) *The determination of members of record entitled to notice*  
28 *of or to vote at a meeting of members shall apply to any*  
29 *adjournment of the meeting unless a manager or the members who*  
30 *called the meeting fix a new record date for the adjourned meeting,*  
31 *but the manager or the members who called the meeting shall fix*  
32 *a new record date if the meeting is adjourned for more than 45*  
33 *days from the date set for the original meeting.*

34     (q) *A meeting of the members may be conducted, in whole or*  
35 *in part, by electronic transmission by and to the limited liability*  
36 *company or by electronic video screen communication if both of*  
37 *the following requirements are met:*

38     (1) *The limited liability company implements reasonable*  
39 *measures to provide members, in person or by proxy, a reasonable*  
40 *opportunity to participate in the meeting and to vote on matters*

1 submitted to the members, including an opportunity to read or  
2 hear the proceedings of the meeting substantially concurrently  
3 with those proceedings.

4 (2) When any member votes or takes other action at the meeting  
5 by means of electronic transmission to the limited liability company  
6 or electronic video screen communication, a record of that vote  
7 or action shall be maintained by the limited liability company.

8 17704.08. (a) A limited liability company, or a series of a  
9 limited liability company, shall reimburse for any payment made  
10 and indemnify for any debt, obligation, or other liability incurred  
11 by a member of a member-managed limited liability company or  
12 the manager of a manager-managed limited liability company in  
13 the course of the member's or manager's activities on behalf of  
14 the limited liability company, if, in making the payment or incurring  
15 the debt, obligation, or other liability, the member or manager  
16 complied with the duties stated in Sections 17704.05 and 17704.09.

17 (b) A limited liability company, or a series of a limited liability  
18 company, may purchase and maintain insurance on behalf of a  
19 member or manager of the limited liability company against  
20 liability asserted against or incurred by the member or manager  
21 in that capacity or arising from that status even if, under  
22 subdivision (g) of Section 17701.10, the operating agreement could  
23 not eliminate or limit the person's liability to the limited liability  
24 company for the conduct giving rise to the liability.

25 17704.09. (a) The fiduciary duties that a member owes to a  
26 member-managed limited liability company, or a series of a limited  
27 liability company, and the other members of the limited liability  
28 company, or a series of a limited liability company, are the duties  
29 of loyalty and care under subdivisions (b) and (c).

30 (b) A member's duty of loyalty to a limited liability company,  
31 or a series of a limited liability company, and the other members  
32 is limited to the following:

33 (1) To account to a limited liability company, or a series of a  
34 limited liability company, and hold as trustee for it any property,  
35 profit, or benefit derived by the member in the conduct and winding  
36 up of the activities of a limited liability company, or a series of  
37 the limited liability company, or derived from a use by the member  
38 of a limited liability company, or a series of a limited liability  
39 company, property, including the appropriation of a limited

1 liability company, or a series of a limited liability company,  
2 opportunity.

3 (2) To refrain from dealing with a limited liability company, or  
4 a series of a limited liability company, in the conduct or winding  
5 up of the activities of a limited liability company, or a series of a  
6 limited liability company, as or on behalf of a party having an  
7 interest adverse to a limited liability company, or a series of a  
8 limited liability company.

9 (3) To refrain from competing with a limited liability company,  
10 or a series of a limited liability company, in the conduct or winding  
11 up of the activities of the limited liability company, or a series of  
12 the limited liability company.

13 (c) A member's duty of care to a limited liability company, or  
14 a series of a limited liability company, and the other members in  
15 the conduct and winding up the activities of the limited liability  
16 company, or a series of the limited liability company, is limited to  
17 refraining from engaging in grossly negligent or reckless conduct,  
18 intentional misconduct, or a knowing violation of law.

19 (d) A member shall discharge the duties to a limited liability  
20 company, or a series of a limited liability company, and the other  
21 members under this title or under the operating agreement and  
22 exercise any rights consistent with the obligation of good faith and  
23 fair dealing.

24 (e) A member does not violate a duty or obligation under this  
25 article or under the operating agreement merely because the  
26 member's conduct furthers the member's own interest.

27 (f) In a manager-managed limited liability company, all of the  
28 following rules apply:

29 (1) Subdivisions (a), (b), (c), and (e) apply to the manager or  
30 managers and not the members.

31 (2) Subdivision (d) applies to the members and managers.

32 (3) A member does not have any fiduciary duty to the limited  
33 liability company, or a series of a limited liability company, or to  
34 any other member solely by reason of being a member.

35 17704.10. (a) In a member-managed limited liability company,  
36 all of the following rules apply:

37 (1) On reasonable notice, a member may inspect and copy  
38 during regular business hours, at a reasonable location specified  
39 by the limited liability company, any record maintained by the  
40 limited liability company regarding the limited liability company's

1 activities, financial condition, and other circumstances, to the  
2 extent the information is material to the member's rights and duties  
3 under the operating agreement or this title.

4 (2) The limited liability company shall furnish to each member  
5 all of the following:

6 (A) Without demand, any information concerning the limited  
7 liability company's activities, financial condition, and other  
8 circumstances that the limited liability company knows and that  
9 is material to the proper exercise of the member's rights and duties  
10 under the operating agreement or this title, except to the extent  
11 the limited liability company can establish that it reasonably  
12 believes the member already knows the information.

13 (B) On demand, any other information concerning the limited  
14 liability company's activities, financial condition, and other  
15 circumstances, except to the extent the demand or information  
16 demanded is unreasonable or otherwise improper under the  
17 circumstances.

18 (3) The duty to furnish information under paragraph (2) also  
19 applies to each member to the extent the member knows any of the  
20 information described in paragraph (2).

21 (b) In a manager-managed limited liability company, all of the  
22 following rules apply:

23 (1) The informational rights stated in subdivision (a) and the  
24 duty stated in paragraph (3) of subdivision (a) apply to the  
25 managers and not the members.

26 (2) During regular business hours and at a reasonable location  
27 specified by the limited liability company, a member may obtain  
28 from the limited liability company and inspect and copy full  
29 information regarding the activities, financial condition, and other  
30 circumstances of the limited liability company as is just and  
31 reasonable if all of the following apply:

32 (A) The member seeks the information for a purpose material  
33 to the member's interest as a member.

34 (B) The member makes a demand in a record received by the  
35 limited liability company, describing with reasonable particularity  
36 the information sought, and the purpose for seeking the  
37 information.

38 (C) The information sought is directly connected to the  
39 member's purpose.

1     (3) Within 10 days after receiving a demand pursuant to  
2     subparagraph (B) of paragraph (2), the limited liability company  
3     shall in a record inform the member that made the demand of all  
4     the following:

5     (A) The information that the limited liability company will  
6     provide in response to the demand and when and where the limited  
7     liability company will provide the information.

8     (B) If the limited liability company declines to provide any  
9     demanded information, the limited liability company's reasons for  
10    declining.

11    (4) Whenever this title or an operating agreement provides for  
12    a member to give or withhold consent to a matter, before the  
13    consent is given or withheld, the limited liability company shall,  
14    without demand, provide the member with all information that is  
15    known to the limited liability company and is material to the  
16    member's decision.

17    (c) On 10 days' demand made in a record received by a limited  
18    liability company, a dissociated member may have access to  
19    information to which the person was entitled while a member if  
20    the information pertains to the period during which the person  
21    was a member, the person seeks the information in good faith, and  
22    the person satisfies the requirements imposed on a member by  
23    paragraph (2) of subdivision (b). The limited liability company  
24    shall respond to a demand made pursuant to this subdivision in  
25    the manner provided in paragraph (3) of subdivision (b).

26    (d) A limited liability company may charge a person that makes  
27    a demand under this section the reasonable costs of copying the  
28    information, limited to the costs of labor and material.

29    (e) A member or dissociated member may exercise rights under  
30    this section through an agent or, in the case of an individual under  
31    legal disability, a legal representative. Any restriction or condition  
32    imposed by the operating agreement or under subdivision (g)  
33    applies both to the agent or legal representative and the member  
34    or dissociated member.

35    (f) The rights under this section do not extend to a person as  
36    transferee.

37    (g) In addition to any restriction or condition stated in its  
38    operating agreement, a limited liability company, as a matter  
39    within the ordinary course of its activities, may impose reasonable  
40    restrictions and conditions on access to and use of information to

1 *be furnished under this section, including designating information*  
2 *confidential and imposing nondisclosure and safeguarding*  
3 *obligations on the recipient. In a dispute concerning the*  
4 *reasonableness of a restriction under this subdivision, the limited*  
5 *liability company has the burden of proving reasonableness.*

6 *(h) Upon complaint that a limited liability company is failing*  
7 *to comply with the provisions of Section 17704.11, or to afford to*  
8 *the members rights given to them in the articles of organization*  
9 *or operating agreement, the Attorney General may, in the name*  
10 *of the people of the State of California, send to the office required*  
11 *to be maintained pursuant to Section 17701.13, notice of the*  
12 *complaint.*

13 *(i) If the answer of the limited liability company is not received*  
14 *within 30 days of the date the notice was transmitted, or if the*  
15 *answer is not satisfactory, and if the enforcement of the rights of*  
16 *the aggrieved persons by private civil action, by class action, or*  
17 *otherwise, would be so burdensome or expensive as to be*  
18 *impracticable, the Attorney General may institute, maintain, or*  
19 *intervene in any court of competent jurisdiction or before any*  
20 *administrative agency for relief by way of injunction, the*  
21 *dissolution of entities, the appointment of receivers, or any other*  
22 *temporary, preliminary, provisional, or final remedies as may be*  
23 *appropriate to protect the rights of members or to restore the*  
24 *position of the members for the failure to comply with the*  
25 *requirements of Section 17701.13 or the articles of organization*  
26 *or the operating agreement. In any action, suit, or proceeding,*  
27 *there may be joined as parties all persons and entities responsible*  
28 *for or affected by the activity.*

29  
30 *Article 5. Transferable Interests and Rights of Transferees and*  
31 *Creditors*  
32

33 *17705.01. A transferable interest is personal property.*

34 *17705.02. (a) With respect to a transfer, in whole or in part,*  
35 *of a transferable interest, all of the following apply:*

36 *(1) A transfer is permissible.*

37 *(2) A transfer does not by itself cause a member's dissociation*  
38 *or a dissolution and winding up of the activities of a limited liability*  
39 *company, or a series of a limited liability company.*

1     (3) *Subject to Section 17705.04, a transfer does not entitle the*  
2 *transferee to do any of the following:*

3     (A) *Participate in the management or conduct of the activities*  
4 *of a limited liability company or a series of a limited liability*  
5 *company.*

6     (B) *Except as otherwise provided in subdivision (c), have access*  
7 *to records or other information concerning the activities of a*  
8 *limited liability company or a series of a limited liability company.*

9     (b) *A transferee has the right to receive, in accordance with the*  
10 *transfer, distributions to which the transferor would otherwise be*  
11 *entitled.*

12     (c) *In a dissolution and winding up of a limited liability*  
13 *company, a transferee is entitled to an account of the limited*  
14 *liability company's transactions only from the date of dissolution.*

15     (d) *A transferable interest may be evidenced by a certificate of*  
16 *the interest issued by the limited liability company, or a series of*  
17 *a limited liability company, in a record, and, subject to this article,*  
18 *the interest represented by the certificate may be transferred by a*  
19 *transfer of the certificate.*

20     (e) *A limited liability company, or a series of a limited liability*  
21 *company, need not give effect to a transferee's rights under this*  
22 *section until the limited liability company, or a series of a limited*  
23 *liability company, has notice of the transfer.*

24     (f) *A transfer of a transferable interest in violation of a*  
25 *restriction on transfer contained in the operating agreement is*  
26 *ineffective as to a person having notice of the restriction at the*  
27 *time of transfer.*

28     (g) *Except as otherwise provided in paragraph (2) of subdivision*  
29 *(d) of Section 17706.02, when a member transfers a transferable*  
30 *interest, the transferor retains the rights of a member, other than*  
31 *the interest in distributions transferred, and retains all duties and*  
32 *obligations of a member.*

33     (h) *When a member transfers a transferable interest to a person*  
34 *that becomes a member with respect to the transferred interest,*  
35 *the transferee is liable for the member's obligations under Section*  
36 *17704.03 and subdivision (c) of Section 17704.06 known to the*  
37 *transferee when the transferee becomes a member.*

38     17705.03. (a) *On application by a judgment creditor of a*  
39 *member or transferee, a court may enter a charging order against*  
40 *the transferable interest of the judgment debtor for the unsatisfied*

1 amount of the judgment. A charging order constitutes a lien on a  
2 judgment debtor's transferable interest and requires the limited  
3 liability company to pay over to the person to which the charging  
4 order was issued any distribution that would otherwise be paid to  
5 the judgment debtor.

6 (b) To the extent necessary to effectuate the collection of  
7 distributions pursuant to a charging order in effect under  
8 subdivision (a), the court may do any of the following:

9 (1) Appoint a receiver of the distributions subject to the charging  
10 order, with the power to make all inquiries the judgment debtor  
11 might have made.

12 (2) Make all other orders necessary to give effect to the charging  
13 order.

14 (3) Upon a showing that distributions under a charging order  
15 will not pay the judgment debt within a reasonable time, foreclose  
16 the lien and order the sale of the transferable interest. The  
17 purchaser at the foreclosure sale obtains only the transferable  
18 interest, does not thereby become a member, and is subject to  
19 Section 17705.02.

20 (c) At any time before foreclosure under paragraph (3) of  
21 subdivision (b), the member or transferee whose transferable  
22 interest is subject to a charging order under subdivision (a) may  
23 extinguish the charging order by satisfying the judgment and filing  
24 a certified copy of the satisfaction with the court that issued the  
25 charging order.

26 (d) At any time before foreclosure under paragraph (3) of  
27 subdivision (b), a limited liability company or one or more  
28 members whose transferable interests are not subject to the  
29 charging order may pay to the judgment creditor the full amount  
30 due under the judgment and thereby succeed to the rights of the  
31 judgment creditor, including the charging order.

32 (e) This title does not deprive any member or transferee of the  
33 benefit of any exemption laws applicable to the member's or  
34 transferee's transferable interest.

35 (f) This section provides the exclusive remedy by which a person  
36 seeking to enforce a judgment against a member or transferee  
37 may, in the capacity of judgment creditor, satisfy the judgment  
38 from the judgment debtor's transferable interest.

39 17705.04. If a member dies, the deceased member's personal  
40 representative or other legal representative may exercise the rights

1 of a transferee provided in subdivision (c) of Section 17705.02  
2 and, for the purposes of settling the estate, the rights of a current  
3 member under Section 17704.10.

4  
5 Article 6. Member's Dissociation  
6

7 17706.01. (a) A person has the power to dissociate as a  
8 member at any time, rightfully or wrongfully, by withdrawing as  
9 a member by express will pursuant to paragraph (1) of subdivision  
10 (a) of Section 17706.02.

11 (b) A person's dissociation from a limited liability company is  
12 wrongful only if either of the following apply to the dissociation:

13 (1) The dissociation is in breach of an express provision of the  
14 operating agreement.

15 (2) The dissociation occurs before the termination of the limited  
16 liability company and any of the following:

17 (A) The person withdraws as a member by express will.

18 (B) The person is expelled as a member by judicial order under  
19 paragraph (5) of subdivision (a) of Section 17706.02.

20 (C) The person is dissociated under subparagraph (A) of  
21 paragraph (7) of subdivision (a) of Section 17706.02 by becoming  
22 a debtor in bankruptcy.

23 (D) In the case of a person that is not a trust other than a  
24 business trust, an estate, or an individual, the person is expelled  
25 or otherwise dissociated as a member because it dissolved or  
26 terminated.

27 (c) A person that wrongfully dissociates as a member is liable  
28 to the limited liability company and, subject to Section 17709.01,  
29 to the other members for damages caused by the dissociation. The  
30 liability is in addition to any other debt, obligation, or other  
31 liability of the member to the limited liability company or the other  
32 members.

33 17706.02. A person is dissociated as a member from a limited  
34 liability company when any of the following occur:

35 (a) The limited liability company has notice of the person's  
36 express will to withdraw as a member, but, if the person specified  
37 a withdrawal date later than the date the limited liability company  
38 had notice, on that later date.

39 (b) An event stated in the operating agreement as causing the  
40 person's dissociation to occur.

1     (c) *The person is expelled as a member pursuant to the operating*  
2 *agreement.*

3     (d) *The person is expelled as a member by the unanimous*  
4 *consent of the other members because any of the following applies:*

5         (1) *It is unlawful to carry on the limited liability company's*  
6 *activities with the person as a member.*

7         (2) *There has been a transfer of all of the person's transferable*  
8 *interest in the limited liability company, other than either of the*  
9 *following:*

10             (A) *A transfer for security purposes.*

11             (B) *A charging order in effect under Section 17705.03 that has*  
12 *not been foreclosed.*

13         (3) *The person is a corporation and, within 90 days after the*  
14 *limited liability company notifies the person that it will be expelled*  
15 *as a member because the person has filed a certificate of*  
16 *dissolution or the equivalent, its charter has been revoked, or its*  
17 *right to conduct business has been suspended by the jurisdiction*  
18 *of its incorporation and the certificate of dissolution has not been*  
19 *revoked or its charter or right to conduct business has not been*  
20 *reinstated.*

21         (4) *The person is a limited liability company or partnership that*  
22 *has been dissolved and whose business is being wound up.*

23     (e) *On application by the limited liability company, the person*  
24 *is expelled as a member by judicial order because the person has*  
25 *done any of the following:*

26         (1) *Engaged, or is engaging, in wrongful conduct that has*  
27 *adversely and materially affected, or will adversely and materially*  
28 *affect, the limited liability company's activities.*

29         (2) *Willfully or persistently committed, or is willfully and*  
30 *persistently committing, a material breach of the operating*  
31 *agreement or the person's duties or obligations under Section*  
32 *17704.09.*

33         (3) *Engaged, or is engaging, in conduct relating to the limited*  
34 *liability company's activities that makes it not reasonably*  
35 *practicable to carry on the activities with the person as a member:*

36     (f) *In the case of a person who is an individual, if either of the*  
37 *following applies:*

38         (1) *The person dies.*

39         (2) *In a member-managed limited liability company if either of*  
40 *the following applies:*

1 (A) A guardian or general conservator for the person is  
2 appointed.

3 (B) There is a judicial order that the person has otherwise  
4 become incapable of performing the person's duties as a member  
5 under this title or the operating agreement.

6 (g) In a member-managed limited liability company, the person  
7 becomes a debtor in bankruptcy.

8 (h) In the case of a person that is a trust or is acting as a  
9 member by virtue of being a trustee of a trust, the trust's entire  
10 transferable interest in the limited liability company is distributed  
11 but not solely by reason of a substitution of a successor trustee.

12 (i) In the case of a person that is an estate or is acting as a  
13 member by virtue of being a personal representative of an estate,  
14 the estate's entire transferable interest in the limited liability  
15 company is distributed but not solely by reason of a substitution  
16 of a successor personal representative.

17 (j) In the case of a member that is not an individual, partnership,  
18 limited liability company, corporation, trust, or estate, the  
19 termination of the member.

20 (k) The limited liability company participates in a merger under  
21 Article 10 (commencing with Section 17710.01), if either of the  
22 following applies:

23 (1) The limited liability company is not the surviving entity.

24 (2) Otherwise as a result of the merger, the person ceases to be  
25 a member.

26 (l) The limited liability company terminates.

27 17706.03. (a) When a person is dissociated as a member of a  
28 limited liability company all of the following apply:

29 (1) The person's right to participate as a member in the  
30 management and conduct of the limited liability company's  
31 activities terminates.

32 (2) If the limited liability company is member-managed, the  
33 person's fiduciary duties as a member end with regard to matters  
34 arising and events occurring after the person's dissociation.

35 (3) Subject to Section 17705.04 and Article 10 (commencing  
36 with Section 17710.01), any transferable interest owned by the  
37 person immediately before dissociation in the person's capacity  
38 as a member is owned by the person solely as a transferee.

39 (b) A person's dissociation as a member of a limited liability  
40 company does not of itself discharge the person from any debt,

1 obligation, or other liability to the limited liability company or the  
2 other members that the person incurred while a member.

3  
4 Article 7. Dissolution and Winding Up

5  
6 17707.01. A limited liability company, or a series of a limited  
7 liability company, is dissolved, and its activities shall be wound  
8 up, upon the happening of the first to occur of the following:

9 (a) On the happening of an event set forth in a written operating  
10 agreement or the articles of organization.

11 (b) By the vote of a majority in interest of the members of the  
12 limited liability company, or a series of a limited liability company,  
13 or a greater percentage of the voting interests of members as may  
14 be specified in the articles of organization, or a written operating  
15 agreement.

16 (c) The passage of 90 consecutive days during which the limited  
17 liability company, or a series of a limited liability company, has  
18 no members, except on the death of a natural person who is the  
19 sole member of a limited liability company, or a series of a limited  
20 liability company, the status of the member, including a  
21 membership interest, may pass to the heirs, successors, and assigns  
22 of the member by will or applicable law. The heir, successor, or  
23 assign of the member's interest becomes a substituted member  
24 pursuant to subdivision (d) of Section 17704.01, subject to  
25 administration as provided by applicable law, without the  
26 permission or consent of the heirs, successors, or assigns or, those  
27 administering the estate of the deceased member.

28 (d) Entry of a decree of judicial dissolution pursuant to Section  
29 17707.03.

30 17707.02. (a) Notwithstanding any other provision of this title,  
31 if a domestic limited liability company has not conducted any  
32 business, only a majority of the members, or, if there are no  
33 members, the majority of the managers, if any, or if no members  
34 or managers, the person or a majority of the persons signing the  
35 articles of organization, may execute and acknowledge a certificate  
36 of cancellation of articles of organization, on a form prescribed  
37 by the Secretary of State, stating all of the following:

38 (1) The name of the domestic limited liability company and the  
39 Secretary of State's file number.

1     (2) *That the certificate of cancellation is being filed within 12*  
2 *months from the date the articles of organization was filed.*

3     (3) *That the limited liability company does not have any debts*  
4 *or other liabilities, except as provided in paragraph (4).*

5     (4) *That a final franchise tax return, as described by Section*  
6 *23332 of the Revenue and Taxation Code, or a final annual tax*  
7 *return, as described by Section 17947 of the Revenue and Taxation*  
8 *Code, has been or will be filed with the Franchise Tax Board, as*  
9 *required under Part 10.2 (commencing with Section 18401) of*  
10 *Division 2 of the Revenue and Taxation Code.*

11     (5) *That the known assets of the limited liability company*  
12 *remaining after payment of, or adequately providing for, known*  
13 *debts and liabilities have been distributed to the persons entitled*  
14 *thereto or that the limited liability company acquired no known*  
15 *assets, as the case may be.*

16     (6) *That the limited liability company has not conducted any*  
17 *business from the time of the filing of the articles of organization.*

18     (7) *That a majority of the managers or members voted, or, if*  
19 *no managers or members, the person or a majority of the persons*  
20 *signing the articles of organization, voted to dissolve the limited*  
21 *liability company.*

22     (8) *If the limited liability company has received payments for*  
23 *interests from investors, that those payments have been returned*  
24 *to those investors.*

25     (b) *A certificate of cancellation executed and acknowledged*  
26 *pursuant to subdivision (a) shall be filed with the Secretary of*  
27 *State within 12 months from the date that the articles of*  
28 *organization was filed. The Secretary of State shall notify the*  
29 *Franchise Tax Board of the cancellation.*

30     (c) *Upon filing a certificate of cancellation pursuant to*  
31 *subdivision (a), a limited liability company shall be canceled and*  
32 *its powers, rights, and privileges shall cease.*

33     (d) *A domestic limited liability company that filed articles of*  
34 *organization on or after January 1, 2004, and that meets all of the*  
35 *conditions described in subdivision (a) may file a certificate of*  
36 *cancellation under this section.*

37     17707.03. (a) *Pursuant to an action filed by any manager or*  
38 *by any member or members of a limited liability company, a court*  
39 *of competent jurisdiction may decree the dissolution of a limited*  
40 *liability company whenever any of the events specified in*

1 subdivision (b) occurs. Pursuant to an action filed by a manager  
2 or by any member or members of a series, a court of competent  
3 jurisdiction may decree the dissolution of that series whenever  
4 any of the events specified in subdivision (b) with respect to that  
5 series occurs.

6 (b) (1) It is not reasonably practicable to carry on the business  
7 in conformity with the articles of organization or operating  
8 agreement.

9 (2) Dissolution is reasonably necessary for the protection of  
10 the rights or interests of the complaining members.

11 (3) The business of the limited liability company, or a series of  
12 a limited liability company, has been abandoned.

13 (4) The management of the limited liability company, or a series  
14 of a limited liability company, is deadlocked or subject to internal  
15 dissention.

16 (5) Those in control of the limited liability company, or a series  
17 of a limited liability company, have been guilty of, or have  
18 knowingly countenanced persistent and pervasive fraud,  
19 mismanagement, or abuse of authority.

20 (c) (1) In any suit for judicial dissolution, the other members  
21 may avoid the dissolution of the limited liability company, or a  
22 series of a limited liability company, by purchasing for cash the  
23 membership interests owned by the members so initiating the  
24 proceeding, the “moving parties,” at their fair market value. In  
25 fixing the value, the amount of any damages resulting if the  
26 initiation of the dissolution is a breach by any moving party or  
27 parties of an agreement with the purchasing party or parties,  
28 including, without limitation, the operating agreement, may be  
29 deducted from the amount payable to the moving party or parties;  
30 provided, that no member who sues for dissolution on the grounds  
31 set forth in paragraph (3), (4), or (5) of subdivision (a) shall be  
32 liable for damages for breach of contract in bringing that action.

33 (2) If the purchasing parties elect to purchase the membership  
34 interests owned by the moving parties, are unable to agree with  
35 the moving parties upon the fair market value of the membership  
36 interests, and give bond with sufficient security to pay the estimated  
37 reasonable expenses, including attorneys’ fees, of the moving  
38 parties if the expenses are recoverable under paragraph (3), the  
39 court, upon application of the purchasing parties, either in the  
40 pending action or in a proceeding initiated in the superior court

1 of the proper county by the purchasing parties, shall stay the  
2 winding up and dissolution proceeding and shall proceed to  
3 ascertain and fix the fair market value of the membership interests  
4 owned by the moving parties.

5 (3) The court shall appoint three disinterested appraisers to  
6 appraise the fair market value of the membership interests owned  
7 by the moving parties, and shall make an order referring the matter  
8 to the appraisers so appointed for the purpose of ascertaining that  
9 value. The order shall prescribe the time and manner of producing  
10 evidence, if evidence is required. The award of the appraisers or  
11 a majority of them, when confirmed by the court, shall be final  
12 and conclusive upon all parties. The court shall enter a decree  
13 that shall provide in the alternative for winding up and dissolution  
14 of the limited liability company, or a series of a limited liability  
15 company, unless payment is made for the membership interests  
16 within the time specified by the decree. If the purchasing parties  
17 do not make payment for the membership interests within the time  
18 specified, judgment shall be entered against them and the surety  
19 or sureties on the bond for the amount of the expenses, including  
20 attorneys' fees, of the moving parties. Any member aggrieved by  
21 the action of the court may appeal therefrom.

22 (4) If the purchasing parties desire to prevent the winding up  
23 and dissolution of the limited liability company, or a series of a  
24 limited liability company, they shall pay to the moving parties the  
25 value of their membership interests ascertained and decreed within  
26 the time specified pursuant to this section, or, in the case of an  
27 appeal, as fixed on appeal. On receiving that payment or the tender  
28 of payment, the moving parties shall transfer their membership  
29 interests to the purchasing parties.

30 (5) For the purposes of this section, the valuation date shall be  
31 the date upon which the action for judicial dissolution was  
32 commenced. However, the court may, upon the hearing of a motion  
33 by any party, and for good cause shown, designate some other  
34 date as the valuation date.

35 (6) A dismissal of any suit for judicial dissolution by a manager,  
36 member, or members shall not affect the other members' rights to  
37 avoid dissolution pursuant to this section.

38 17707.04. In the event of a dissolution of a limited liability  
39 company all of the following apply:

1     (a) *The managers who have not wrongfully dissolved the limited*  
2 *liability company, or a series of a limited liability company, or, if*  
3 *none, the members, or, if none, the person or a majority of the*  
4 *persons signing the articles of organization, may wind up the*  
5 *affairs of the limited liability company, or a series of the limited*  
6 *liability company, unless the dissolution occurs pursuant to Section*  
7 *17707.03, in which event the winding up shall be conducted in*  
8 *accordance with the decree of dissolution. The persons winding*  
9 *up the affairs of the limited liability company, or a series of a*  
10 *limited liability company, shall give written notice of the*  
11 *commencement of winding up by mail to all known creditors and*  
12 *claimants whose addresses appear on the records of the limited*  
13 *liability company.*

14     (b) *Upon the petition of any manager or of any member or*  
15 *members, or three or more creditors of a limited liability company*  
16 *or a series of a limited liability company, a court of competent*  
17 *jurisdiction may enter a decree ordering the winding up of the*  
18 *limited liability company, or a series of a limited liability company,*  
19 *if that appears necessary for the protection of any parties in*  
20 *interest. The decree shall designate the managers or members, or*  
21 *if good cause is shown, another person or persons, who are to*  
22 *wind up the affairs of the limited liability company, or a series of*  
23 *the limited liability company.*

24     (c) *Except as otherwise provided in the articles of organization*  
25 *or a written operating agreement, the persons winding up the*  
26 *affairs of the limited liability company, or a series of a limited*  
27 *liability company, pursuant to this section shall be entitled to*  
28 *reasonable compensation.*

29     17707.05. (a) *Except as otherwise provided in the articles of*  
30 *organization or the written operating agreement, after determining*  
31 *that all the known debts and liabilities of a limited liability*  
32 *company, or a series of a limited liability company, in the process*  
33 *of winding up, including, without limitation, debts and liabilities*  
34 *to members who are creditors of the limited liability company, or*  
35 *a series of a limited liability company, have been paid or*  
36 *adequately provided for, the remaining assets shall be distributed*  
37 *among the members according to their respective rights and*  
38 *preferences as follows:*

39     (1) *To members in satisfaction of liabilities for distributions*  
40 *pursuant to Sections 17704.04, 17704.05, and 17704.06.*

1     (2) *To members of the limited liability company, or a series of*  
2 *a limited liability company, for the return of their contributions.*

3     (3) *To members in the proportions in which those members*  
4 *share in distributions.*

5     (b) *If the winding up is by court proceeding or subject to court*  
6 *supervision, the distribution shall not be made until after the*  
7 *expiration of any period for the presentation of claims that has*  
8 *been prescribed by order of the court.*

9     (c) (1) *The payment of a debt or liability, whether the*  
10 *whereabouts of the creditor is known or unknown, has been*  
11 *adequately provided for if the payment has been provided for by*  
12 *either of the following means:*

13     (A) *Payment for the debt or liability has been assumed or*  
14 *guaranteed in good faith by one or more financially responsible*  
15 *persons or by the United States government or any agency of the*  
16 *United States government, and the provision, including the*  
17 *financial responsibility of the person, was determined in good faith*  
18 *and with reasonable care by the members or managers of the*  
19 *limited liability company to be adequate at the time of any*  
20 *distribution of the assets pursuant to this section.*

21     (B) *The amount of the debt or liability has been deposited as*  
22 *provided in Section 2008 of the General Corporation Law.*

23     (2) *This subdivision shall not prescribe the exclusive means of*  
24 *making adequate provision for debts and liabilities.*

25     17707.06. (a) *A limited liability company, or a series of a*  
26 *limited liability company, that is dissolved nevertheless continues*  
27 *to exist for the purpose of winding up its affairs, prosecuting and*  
28 *defending actions by or against it in order to collect and discharge*  
29 *obligations, disposing of and conveying its property, and collecting*  
30 *and dividing its assets. A limited liability company, or a series of*  
31 *a limited liability company, shall not continue business except so*  
32 *far as necessary for its winding up.*

33     (b) *No action or proceeding to which a limited liability company*  
34 *is a party abates by the dissolution of the limited liability company,*  
35 *or a series of a limited liability company, or by reason of*  
36 *proceedings for its winding up and dissolution.*

37     (c) *Any assets inadvertently or otherwise omitted from the*  
38 *winding up continue in the dissolved limited liability company, or*  
39 *a series of a limited liability company, for the benefit of the persons*

1 *entitled to those assets upon dissolution and on realization shall*  
2 *be distributed accordingly.*

3 *(d) After dissolution of the limited liability company, or a series*  
4 *of a limited liability company, the limited liability company, or a*  
5 *series of a limited liability company, is bound by both of the*  
6 *following:*

7 *(1) The act of a person authorized to wind up the affairs of the*  
8 *limited liability company, or a series of a limited liability company,*  
9 *if the act is appropriate for winding up the activities of the limited*  
10 *liability company, or a series of the limited liability company.*

11 *(2) The act of a person authorized to act on behalf of the limited*  
12 *liability company, or a series of a limited liability company, if the*  
13 *act would have bound the limited liability company, or a series of*  
14 *a limited liability company, before dissolution, if the other party*  
15 *to the transaction did not have notice of the dissolution.*

16 *17707.07. (a) (1) Causes of action against a dissolved limited*  
17 *liability company, or a series of a limited liability company,*  
18 *whether arising before or after the dissolution of the limited*  
19 *liability company, or a series of a limited liability company, may*  
20 *be enforced against any of the following:*

21 *(A) Against the dissolved limited liability company, or a series*  
22 *of a limited liability company, to the extent of its undistributed*  
23 *assets, including, without limitation, any insurance assets held by*  
24 *the limited liability company, or a series of a limited liability*  
25 *company, that may be available to satisfy claims.*

26 *(B) If any of the assets of the dissolved limited liability company,*  
27 *or a series of a limited liability company, have been distributed to*  
28 *members, against members of the dissolved limited liability*  
29 *company, or a series of a limited liability company, to the extent*  
30 *of the limited liability company, or a series of a limited liability*  
31 *company, assets distributed to them upon dissolution of the limited*  
32 *liability company, or a series of a limited liability company.*

33 *Any member compelled to return distributed assets in an amount*  
34 *that exceeds the sum of the member's pro rata share of the claim*  
35 *and the amount for which the member could otherwise be held*  
36 *liable under Section 17704.05 or 17704.06 may seek contribution*  
37 *for the excess from any other member or manager, up to the sum*  
38 *of that other person's pro rata share of the claim and that other*  
39 *person's liabilities under Section 17704.05 or 17704.06; provided*  
40 *that in case of dissolution of a series, such member may seek*

1 contribution as provided in this section only from another member  
2 or manager of that series.

3 (2) Except as set forth in subdivision (c), all causes of action  
4 against a member of a dissolved limited liability company, or a  
5 series of a limited liability company, arising under this section are  
6 extinguished unless the claimant commences a proceeding to  
7 enforce the cause of action against that member of a dissolved  
8 limited liability company, or a series of a limited liability company,  
9 prior to the earlier of the following:

10 (A) The expiration of the statute of limitations applicable to the  
11 cause of action.

12 (B) Four years after the effective date of the dissolution of the  
13 limited liability company or a series of a limited liability company.

14 (3) As a matter of procedure only, and not for purposes of  
15 determining liability, members of the dissolved limited liability  
16 company, or a series of a limited liability company, may be sued  
17 in the name of the limited liability company, or a series of a limited  
18 liability company, upon any cause of action against the limited  
19 liability company, or a series of a limited liability company. This  
20 section does not affect the rights of the limited liability company,  
21 or a series of a limited liability company, or its creditors under  
22 Sections 17704.05 and 17704.06, or the rights, if any, of creditors  
23 under the Uniform Fraudulent Transfer Act, that may arise against  
24 the member of a limited liability company, or a series of a limited  
25 liability company.

26 (b) Summons or other process against a limited liability  
27 company, or a series of a limited liability company, may be served  
28 by delivering a copy thereof to a manager, member, officer, or  
29 person having charge of its assets or, if none of these persons can  
30 be found, to any agent upon whom process might be served at the  
31 time of dissolution. If none of those persons can be found with due  
32 diligence and it is so shown by affidavit to the satisfaction of the  
33 court, then the court may make an order that summons or other  
34 process be served upon the dissolved limited liability company, or  
35 a series of a limited liability company, by personally delivering a  
36 copy of the summons or other process, together with a copy of the  
37 order, to the Secretary of State or an assistant or deputy Secretary  
38 of State. Service in this manner is deemed complete on the 10th  
39 day after delivery of the process to the Secretary of State. Upon  
40 receipt of process and the fee therefor, the Secretary of State shall

1 give notice to the limited liability company as provided in Section  
2 17717.02.

3 (c) Every limited liability company and each series of a limited  
4 liability company shall survive and continue to exist indefinitely  
5 for the purpose of being sued in any quiet title action. Any judgment  
6 rendered in that action shall bind each and all of its members or  
7 other persons having any equity or other interest in the limited  
8 liability company, or a series of a limited liability company, to the  
9 extent of that interest and the action shall have the same force and  
10 effect as an action brought under the provisions of Sections 410.50  
11 and 410.60 of the Code of Civil Procedure. Service of summons  
12 or other process in any action may be made as provided in Chapter  
13 4 (commencing with Section 413.10) of Title 5 of Part 2 of the  
14 Code of Civil Procedure or as provided in subdivision (b).

15 (d) For purposes of Article 4 (commencing with Section 19071)  
16 of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation  
17 Code, the liability described in this section shall be considered a  
18 liability at law with respect to a dissolved limited liability company,  
19 or a series of a limited liability company.

20 17707.08. (a) (1) The managers shall cause to be filed in the  
21 office of, and on a form prescribed by, the Secretary of State, a  
22 certificate of dissolution upon the dissolution of the limited liability  
23 company pursuant to Article 7 (commencing with Section  
24 17707.01), unless the event causing the dissolution is that specified  
25 in subdivision (c) of Section 17707.01, in which case the persons  
26 conducting the winding up of the limited liability company's affairs  
27 pursuant to Section 17707.04 shall have the obligation to file the  
28 certificate of dissolution.

29 (2) The certificate of dissolution shall set forth all of the  
30 following:

31 (A) The name of the limited liability company and the Secretary  
32 of State's file number.

33 (B) Any other information the persons filing the certificate of  
34 dissolution determine to include.

35 (3) If a dissolution pursuant to subdivision (b) of Section  
36 17707.01 is made by the vote of all of the members and a statement  
37 to that effect is added to the certificate of cancellation of articles  
38 of organization pursuant to subdivision (b), the separate filing of  
39 a certificate of dissolution pursuant to this subdivision is not  
40 required.

1     (b) (1) *The persons who filed the certificate of dissolution shall*  
2 *cause to be filed in the office of, and on a form prescribed by, the*  
3 *Secretary of State, a certificate of cancellation of articles of*  
4 *organization upon the completion of the winding up of the affairs*  
5 *of the limited liability company pursuant to Section 17707.06,*  
6 *unless the event causing the dissolution is that specified in*  
7 *subdivision (c) of Section 17707.01, in that case the persons*  
8 *conducting the winding up of the limited liability company's affairs*  
9 *pursuant to Section 17707.04 shall have the obligation to file the*  
10 *certificate of cancellation of articles of organization.*

11     (2) *The certificate of cancellation of articles of organization*  
12 *shall set forth all of the following:*

13     (A) *The name of the limited liability company and the Secretary*  
14 *of State's file number.*

15     (B) *That a final franchise tax return, as described by Section*  
16 *23332 of the Revenue and Taxation Code, or a final annual tax*  
17 *return, as described by Section 17947 of the Revenue and Taxation*  
18 *Code, has been or will be filed with the Franchise Tax Board, as*  
19 *required under Part 10.2 (commencing with Section 18401) of*  
20 *Division 2 of the Revenue and Taxation Code.*

21     (C) *Any other information the persons filing the certificate of*  
22 *cancellation of articles of organization determine to include.*

23     (3) *The Secretary of State shall notify the Franchise Tax Board*  
24 *of the filing.*

25     17707.09. (a) *Notwithstanding the filing of a certificate of*  
26 *dissolution, a majority in interest of the members may cause to be*  
27 *filed, in the office of, and on a form prescribed by, the Secretary*  
28 *of State, a certificate of continuation, in any of the following*  
29 *circumstances:*

30     (1) *The business of the limited liability company is to be*  
31 *continued pursuant to a unanimous vote of the remaining members.*

32     (2) *The dissolution of the limited liability company was by vote*  
33 *of the members pursuant to subdivision (b) of Section 17707.01*  
34 *and each member who consented to the dissolution has agreed in*  
35 *writing to revoke his or her vote in favor of or consent to the*  
36 *dissolution.*

37     (3) *The limited liability company was not, in fact, dissolved.*

38     (b) *The certificate of continuation shall set forth all of the*  
39 *following:*

1     (1) *The name of the limited liability company and the Secretary*  
2     *of State's file number.*

3     (2) *The grounds provided by subdivision (a) that are the basis*  
4     *for filing the certificate of continuation.*

5     (c) *Upon the filing of a certificate of continuation, the certificate*  
6     *of dissolution shall be of no effect from the time of the filing of the*  
7     *certificate of dissolution.*

8  
9             Article 8. *Foreign Limited Liability Companies*

10  
11     17708.01. (a) *The law of the state or other jurisdiction under*  
12     *which a foreign limited liability company is formed governs all of*  
13     *the following:*

14     (1) *The organization of the limited liability company, its internal*  
15     *affairs, and the authority of its members and managers.*

16     (2) *The liability of a member as member and a manager as*  
17     *manager for the debts, obligations, or other liabilities of the limited*  
18     *liability company or a series of the limited liability company.*

19     (b) *A foreign limited liability company shall not be denied a*  
20     *certificate of registration by reason of any difference between the*  
21     *law of the jurisdiction under which the limited liability company*  
22     *is formed and the law of this state.*

23     (c) *A certificate of registration does not authorize a foreign*  
24     *limited liability company to engage in any business or exercise*  
25     *any power that a limited liability company shall not engage in or*  
26     *exercise in this state.*

27     17708.02. (a) *A foreign limited liability company, or a series*  
28     *of a foreign limited liability company, may apply for a certificate*  
29     *of registration to transact business in this state by delivering an*  
30     *application to the Secretary of State for filing on a form prescribed*  
31     *by the Secretary of State. The application shall state all of the*  
32     *following:*

33     (1) *The name of the foreign limited liability company or a series*  
34     *of a limited liability company and, if the name does not comply*  
35     *with Section 17701.08, an alternate name adopted pursuant to*  
36     *subdivision (a) of Section 17708.05.*

37     (2) *The state and date of its organization and a statement that*  
38     *the foreign limited liability company is authorized to exercise its*  
39     *powers and privileges in that state or other jurisdiction under*

1 *whose law the limited liability company or a series of a foreign*  
2 *limited liability company is formed.*

3 *(3) The address of the limited liability company's principal*  
4 *executive office and of its principal office in this state, if any.*

5 *(4) The name and address of the foreign limited liability*  
6 *company's initial agent for service of process in this state, unless*  
7 *a corporate agent is designated in which case only the name of*  
8 *the agent shall be set forth.*

9 *(5) A statement that the Secretary of State is appointed the agent*  
10 *of the foreign limited liability company for service of process if*  
11 *the agent has resigned and has not been replaced or if the agent*  
12 *cannot be found or served with the exercise of reasonable*  
13 *diligence.*

14 *(b) A foreign limited liability company shall deliver with a*  
15 *completed application under subdivision (a) a certificate of*  
16 *existence, status or good standing or a record of similar import*  
17 *signed by the secretary of state or other official having custody of*  
18 *the limited liability company's publicly filed records in the state*  
19 *or other jurisdiction under whose law the limited liability company*  
20 *is formed. If a series of a foreign limited liability company may*  
21 *not obtain a certificate of existence or a record of similar import*  
22 *signed by the secretary of state for the state or other jurisdiction*  
23 *under whose law it is formed, it may deliver a certificate of*  
24 *existence or record of similar import for the limited liability*  
25 *company of which it is a series signed by the secretary of state for*  
26 *the state or other jurisdiction under whose law it is formed.*

27 *(c) The Secretary of State shall include with instructional*  
28 *materials, provided in conjunction with registration under*  
29 *subdivision (a), a notice that filing the registration will obligate*  
30 *the limited liability company to pay an annual tax to the Franchise*  
31 *Tax Board pursuant to Section 17941 of the Revenue and Taxation*  
32 *Code. That notice shall be updated annually to specify the dollar*  
33 *amount of the tax.*

34 *(d) If a foreign limited liability company establishes or provides*  
35 *for the establishment of one or more series of assets, that fact shall*  
36 *be stated on the certificate of registration. In addition, the foreign*  
37 *limited liability company shall state on the certificate of*  
38 *registration whether the debts, liabilities, and obligations incurred,*  
39 *contracted for or otherwise existing with respect to a series, if any,*  
40 *shall be enforceable against the assets of that series only, and not*

1 *against the assets of the foreign limited liability company generally*  
2 *or any other series of the foreign limited liability company, and*  
3 *whether any of the debts, liabilities, obligations, and expenses*  
4 *incurred, contracted for, or otherwise existing with respect to the*  
5 *foreign limited liability company generally or any other series of*  
6 *the foreign limited liability company shall be enforceable against*  
7 *the assets of that series.*

8 *17708.03. (a) A foreign limited liability company that enters*  
9 *into repeated and successive transactions of business in this state,*  
10 *other than in interstate or foreign commerce, is considered to be*  
11 *transacting business in this state within the meaning of this article.*

12 *(b) Without excluding other activities that may not be considered*  
13 *to be transacting business in this state within the meaning of this*  
14 *article, activities of a foreign limited liability company, or a series*  
15 *of the foreign limited liability company, that do not constitute*  
16 *transacting business in this state include all of the following:*

17 *(1) Maintaining or defending any action or suit or any*  
18 *administrative or arbitration proceeding, or effecting the settlement*  
19 *of those, or the settlement of claims or disputes.*

20 *(2) Carrying on any activity concerning its internal affairs,*  
21 *including holding meetings of its members or managers.*

22 *(3) Maintaining accounts in financial institutions.*

23 *(4) Maintaining offices or agencies for the transfer, exchange,*  
24 *and registration of the limited liability company's own securities*  
25 *or maintaining trustees or depositories with respect to those*  
26 *securities.*

27 *(5) Selling through independent contractors.*

28 *(6) Soliciting or procuring orders, whether by mail or electronic*  
29 *means or through employees or agents or otherwise, if the orders*  
30 *require acceptance outside this state before they become contracts.*

31 *(7) Creating or acquiring indebtedness, evidences of*  
32 *indebtedness, mortgages, liens, or security interests in real or*  
33 *personal property.*

34 *(8) Securing or collecting debts or enforcing mortgages or other*  
35 *security interests in property securing the debts and holding,*  
36 *protecting, or maintaining property so acquired.*

37 *(9) Conducting an isolated transaction that is completed within*  
38 *180 days and is not in the course of a number of repeated*  
39 *transactions of a like nature.*

40 *(10) Transacting business in interstate commerce.*

1     (c) Without excluding other activities that may not be considered  
2     to be transacting business in this state within the meaning of this  
3     article, a foreign limited liability company, or a series of a foreign  
4     limited liability company, shall not be considered to be transacting  
5     that business in this state merely because its subsidiary transacts  
6     that business in this state, or merely because of its status as any  
7     one or more of the following:

8     (1) A shareholder of a domestic corporation.

9     (2) A shareholder of a foreign corporation transacting intrastate  
10    business.

11    (3) A limited partner of a foreign limited partnership transacting  
12    intrastate business.

13    (4) A limited partner of a domestic limited partnership.

14    (5) A member or manager of a foreign limited liability company  
15    transacting intrastate business.

16    (6) A member or manager of a domestic limited liability  
17    company.

18    (d) A person shall not be deemed to be transacting business in  
19    this state within the meaning of this article merely because of its  
20    status as a member or manager of a domestic limited liability  
21    company, or a series of a domestic limited liability company, or  
22    a foreign limited liability company registered to transact intrastate  
23    business in this state.

24    (e) This section does not apply in determining the contacts or  
25    activities that may subject a foreign limited liability company, or  
26    a series of a foreign limited liability company, to service of process,  
27    taxation, or regulation under law of this state other than this  
28    article.

29    17708.04. Unless the Secretary of State determines that an  
30    application for a certificate of registration does not comply with  
31    the filing requirements of this article, the Secretary of State, upon  
32    payment of all required filing fees, shall file the application of a  
33    foreign limited liability company, prepare, sign, and file a  
34    certificate of registration to transact business in this state, and  
35    send a copy of the filed certificate, together with a receipt for the  
36    fees paid, to the limited liability company or its representative.

37    17708.05. (a) A foreign limited liability company or series of  
38    a foreign limited liability company whose name does not comply  
39    with Section 17701.08 shall not obtain a certificate of registration  
40    until it adopts, for the purpose of transacting business in this state,

1 *an alternate name that complies with Section 17701.08. A foreign*  
2 *limited liability company or series of a foreign limited liability*  
3 *company that adopts an alternate name under this subdivision and*  
4 *obtains a certificate of registration with the alternate name need*  
5 *not comply with fictitious or assumed name statutes. After obtaining*  
6 *a certificate of registration with an alternate name, a foreign*  
7 *limited liability company or series of a foreign limited liability*  
8 *company shall transact business in this state under the alternate*  
9 *name unless the limited liability company or series of a foreign*  
10 *limited liability company is authorized under fictitious or assumed*  
11 *name statutes to transact business in this state under another name.*

12 *(b) If a foreign limited liability company, or a series of a foreign*  
13 *limited liability company authorized to transact business in this*  
14 *state changes its name to one that does not comply with Section*  
15 *17701.07, it shall not thereafter transact business in this state until*  
16 *it complies with subdivision (a) and obtains an amended certificate*  
17 *of registration.*

18 *17708.06. To cancel its certificate of registration to transact*  
19 *business in this state, a foreign limited liability company shall*  
20 *deliver to the Secretary of State for filing a notice of cancellation*  
21 *stating the name of the limited liability company and that the*  
22 *limited liability company desires to cancel its certificate of*  
23 *registration. The certificate is canceled when the notice becomes*  
24 *effective.*

25 *17708.07. (a) A foreign limited liability company, or a series*  
26 *of a foreign limited liability company, transacting business in this*  
27 *state shall not maintain an action or proceeding in this state unless*  
28 *it has a certificate of registration to transact business in this state.*

29 *(b) The failure of a foreign limited liability company, or a series*  
30 *of a foreign limited liability company, to have a certificate of*  
31 *registration to transact business in this state does not impair the*  
32 *validity of a contract or act of the limited liability company or*  
33 *prevent the limited liability company from defending an action or*  
34 *proceeding in this state.*

35 *(c) A member or manager of a foreign limited liability company,*  
36 *or a series of a foreign limited liability company, is not liable for*  
37 *the debts, obligations, or other liabilities of the limited liability*  
38 *company solely because the limited liability company transacted*  
39 *business in this state without a certificate of registration.*

1     (d) *If a foreign limited liability company, or a series of a foreign*  
2 *limited liability company, transacts business in this state without*  
3 *a certificate of registration or cancels its certificate of registration,*  
4 *it shall be deemed to have appointed the Secretary of State as its*  
5 *agent for service of process for rights of action arising out of the*  
6 *transaction of business in this state.*

7     17708.08. *The Attorney General may maintain an action to*  
8 *enjoin a foreign limited liability company from transacting business*  
9 *in this state in violation of this title.*

10  
11                     Article 9. *Actions by Members*  
12

13     17709.01. *Any member of a foreign or domestic limited liability*  
14 *company or a series of foreign or domestic limited liability*  
15 *company may bring a class action on behalf of all or a class of*  
16 *members to enforce any claim common to those members and any*  
17 *of those actions shall be governed by the law governing class*  
18 *actions generally, provided that in order to maintain the class*  
19 *action there shall be no requirement that the class be so numerous*  
20 *that joinder of all members of the class is impracticable.*

21     17709.02. (a) *No action shall be instituted or maintained in*  
22 *right of any domestic or foreign limited liability company by any*  
23 *member of the limited liability company, or a series of a limited*  
24 *liability company, unless both of the following conditions exist:*

25         (1) *The plaintiff alleges in the complaint that the plaintiff was*  
26 *a member of record, or beneficiary, at the time of the transaction*  
27 *or any part of the transaction of which the plaintiff complains, or*  
28 *that the plaintiff's interest later devolved upon the plaintiff by*  
29 *operation of law from a member who was a member at the time*  
30 *of the transaction or any part of the transaction complained of.*  
31 *Any member who does not meet these requirements may*  
32 *nevertheless be allowed in the discretion of the court to maintain*  
33 *the action on a preliminary showing to and determination by the*  
34 *court, by motion and after a hearing at which the court shall*  
35 *consider any evidence, by affidavit or testimony, as it deems*  
36 *material, of all of the following:*

37         (A) *There is a strong prima facie case in favor of the claim*  
38 *asserted on behalf of the limited liability company or a series of*  
39 *a limited liability company.*

40         (B) *No other similar action has been or is likely to be instituted.*

1 (C) The plaintiff acquired the interest before there was  
2 disclosure to the public or to the plaintiff of the wrongdoing of  
3 which plaintiff complains.

4 (D) Unless the action can be maintained, the defendant may  
5 retain a gain derived from defendant's willful breach of a fiduciary  
6 duty.

7 (E) The requested relief will not result in unjust enrichment of  
8 the limited liability company or any member of the limited liability  
9 company or a series of a limited liability company.

10 (2) The plaintiff alleges in the complaint with particularity the  
11 plaintiff's efforts to secure from the managers the action the  
12 plaintiff desires or the reasons for not making that effort, and  
13 alleges further that the plaintiff has either informed the limited  
14 liability company, or a series of a limited liability company, or the  
15 managers in writing of the ultimate facts of each cause of action  
16 against each defendant or delivered to the limited liability company  
17 or the managers a true copy of the complaint that the plaintiff  
18 proposes to file.

19 (b) In any action referred to in subdivision (a), at any time  
20 within 30 days after service of summons upon the limited liability  
21 company or upon any defendant who is a manager of the limited  
22 liability company, or a series of the limited liability company, or  
23 held that position at the time of the acts complained of, the limited  
24 liability company or the defendant may move the court for an  
25 order, upon notice and hearing, requiring the plaintiff to furnish  
26 security as hereinafter provided. The motion shall be based upon  
27 one or both of the following grounds:

28 (1) That there is no reasonable possibility that the prosecution  
29 of the cause of action alleged in the complaint against the moving  
30 party will benefit the limited liability company, or a series of the  
31 limited liability company, or its members.

32 (2) That the moving party, if other than the limited liability  
33 company, or a series of the limited liability company, did not  
34 participate in the transaction complained of in any capacity. The  
35 court, on application of the limited liability company, or a series  
36 of the limited liability company, or any defendant, may, for good  
37 cause shown, extend the 30-day period for an additional period  
38 not exceeding 60 days.

39 (c) (1) At the hearing upon any motion pursuant to subdivision  
40 (b), the court shall consider evidence, written or oral, by witnesses

1 or affidavit, as may be material to the ground upon which the  
2 motion is based, or to a determination of the probable reasonable  
3 expenses, including attorneys' fees, of the limited liability company,  
4 or a series of the limited liability company, and the moving party  
5 that will be incurred in the defense of the action.

6 (2) If the court determines, after hearing the evidence adduced  
7 by the parties, that the moving party has established a probability  
8 in support of any of the grounds upon which the motion is based,  
9 the court shall fix the nature and amount of security, not to exceed  
10 fifty thousand dollars (\$50,000), to be furnished by the plaintiff  
11 for reasonable expenses, including attorney's fees, that may be  
12 incurred by the moving party and the limited liability company in  
13 connection with the action. A ruling by the court on the motion  
14 shall not be a determination of any issue in the action or of the  
15 merits of the action. The amount of the security may thereafter be  
16 increased or decreased in the discretion of the court upon a  
17 showing that the security provided has or may become inadequate  
18 or is excessive, but the court shall not in any event increase the  
19 total amount of the security beyond fifty thousand dollars (\$50,000)  
20 in the aggregate for all defendants. If the court, upon a motion,  
21 makes a determination that security shall be furnished by the  
22 plaintiff as to any one or more defendants, the action shall be  
23 dismissed as to that defendant or those defendants, unless the  
24 security required by the court has been furnished within any  
25 reasonable time as shall be fixed by the court. The limited liability  
26 company and the moving party shall have recourse to the security  
27 in the amount that the court determines upon the termination of  
28 the action.

29 (d) If the plaintiff, either before or after a motion is made  
30 pursuant to subdivision (b), or any order or determination pursuant  
31 to that motion, posts good and sufficient bond or bonds in the  
32 aggregate amount of fifty thousand dollars (\$50,000) to secure  
33 the reasonable expenses of the parties entitled to make the motion,  
34 the plaintiff shall be deemed to have complied with the  
35 requirements of this section and with any order for security made  
36 pursuant to this section. Any motion then pending shall be  
37 dismissed and no further or additional bond or other security shall  
38 be required.

39 (e) If a motion is filed pursuant to subdivision (b), no pleadings  
40 need be filed by the limited liability company or any other

1 *defendant and the prosecution of the action shall be stayed until*  
2 *10 days after the motion has been disposed of.*

3 *17709.03. (a) If a limited liability company or a series of a*  
4 *limited liability company is named as or made a party in a*  
5 *derivative proceeding, the limited liability company or a series*  
6 *that is a party to the proceeding may appoint a special litigation*  
7 *committee to investigate the claims asserted in the proceeding and*  
8 *determine whether pursuing the action is in the best interests of*  
9 *the limited liability company or the series that is a party to the*  
10 *proceeding. If the limited liability company or such series appoints*  
11 *a special litigation committee, on motion by the committee made*  
12 *in the name of the limited liability company, except for good cause*  
13 *shown, the court shall stay discovery for the time reasonably*  
14 *necessary to permit the committee to make its investigation. This*  
15 *subdivision does not prevent the court from enforcing a person's*  
16 *right to information under Section 17704.10 or, for good cause*  
17 *shown, granting extraordinary relief in the form of a temporary*  
18 *restraining order or preliminary injunction.*

19 *(b) A special litigation committee shall be composed of one or*  
20 *more disinterested and independent individuals, who may be*  
21 *members.*

22 *(c) A special litigation committee shall be appointed as follows:*

23 *(1) In a member-managed limited liability company as follows:*

24 *(A) By the consent of a majority of the members or a series of*  
25 *a member-managed limited liability company not named as*  
26 *defendants or plaintiffs in the proceeding.*

27 *(B) If all members are named as defendants or plaintiffs in the*  
28 *proceeding, by a majority of the members named as defendants.*

29 *(2) In a manager-managed limited liability company or a series*  
30 *of a manager-managed limited liability company as follows:*

31 *(A) By a majority of the managers not named as defendants or*  
32 *plaintiffs in the proceeding.*

33 *(B) If all managers are named as defendants or plaintiffs in the*  
34 *proceeding, by a majority of the managers named as defendants.*

35 *(d) After appropriate investigation, a special litigation*  
36 *committee may determine that it is in the best interests of the*  
37 *limited liability company or of the series that is a party to the*  
38 *proceeding that the proceeding do any of the following:*

39 *(1) Continue under the control of the plaintiff.*

40 *(2) Continue under the control of the committee.*

1     (3) *Be settled on terms approved by the committee.*

2     (4) *Be dismissed.*

3     (e) *After making a determination under subdivision (d), a special*  
4 *litigation committee shall file with the court a statement of its*  
5 *determination and its report supporting its determination, giving*  
6 *notice to the plaintiff. The court shall determine whether the*  
7 *members of the committee were disinterested and independent and*  
8 *whether the committee conducted its investigation and made its*  
9 *recommendation in good faith, independently, and with reasonable*  
10 *care, with the committee having the burden of proof. If the court*  
11 *finds that the members of the committee were disinterested and*  
12 *independent and that the committee acted in good faith,*  
13 *independently, and with reasonable care, the court shall enforce*  
14 *the determination of the committee. Otherwise, the court shall*  
15 *dissolve the stay of discovery entered under subdivision (a) and*  
16 *allow the action to proceed under the direction of the plaintiff.*

17  
18                     Article 10. Merger and Conversion  
19

20     17710.01. *For purposes of this article, the following definitions*  
21 *apply:*

22     (a) *“Converted entity” means the other business entity or*  
23 *foreign other business entity or foreign limited liability company*  
24 *that results from a conversion of a domestic limited liability*  
25 *company under this title.*

26     (b) *“Converted limited liability company” means a domestic*  
27 *limited liability company that results from a conversion of an other*  
28 *business entity or a foreign other business entity or a foreign*  
29 *limited liability company pursuant to Section 17710.08.*

30     (c) *“Converting limited liability company” means a domestic*  
31 *limited liability company that converts to an other business entity*  
32 *or a foreign other business entity or a foreign limited liability*  
33 *company pursuant to this title.*

34     (d) *“Converting entity” means an other business entity or a*  
35 *foreign other business entity or a foreign limited liability company*  
36 *that converts to a domestic limited liability company pursuant to*  
37 *Section 17710.08.*

38     (e) *“Constituent corporation” means a corporation that is*  
39 *merged with or into one or more limited liability companies or*  
40 *other business entities and that includes a surviving corporation.*

1 (f) “Constituent limited liability company” means a limited  
2 liability company that is merged with or into one or more other  
3 limited liability companies or other business entities and that  
4 includes a surviving limited liability company.

5 (g) “Constituent other business entity” means an other business  
6 entity that is merged with or into one or more limited liability  
7 companies and that includes a surviving other business entity.

8 (h) “Disappearing limited liability company” means a  
9 constituent limited liability company that is not the surviving  
10 limited liability company.

11 (i) “Disappearing other business entity” means a constituent  
12 other business entity that is not the surviving other business entity.

13 (j) “Foreign other business entity” means an other business  
14 entity formed under the laws of any state other than this state or  
15 under the laws of a foreign country.

16 (k) “Other business entity” means a corporation, general  
17 liability company, limited membership, business trust, real estate  
18 investment trust, or unincorporated association, other than a  
19 nonprofit association, but excludes a limited liability company.

20 (l) “Surviving limited liability company” means a limited  
21 liability company into which one or more other limited liability  
22 companies or other business entities are merged.

23 (m) “Surviving other business entity” means an other business  
24 entity into which one or more limited liability companies are  
25 merged.

26 17710.02. (a) A limited liability company may be converted  
27 into an other business entity or a foreign other business entity or  
28 a foreign limited liability company pursuant to this article if both  
29 of the following apply:

30 (1) Pursuant to a conversion into a domestic or foreign general  
31 partnership or limited partnership or into a foreign limited liability  
32 company, each of the members of the converting limited liability  
33 company receives a percentage interest in the profits and capital  
34 of the converted entity equal to that member’s percentage interest  
35 in profits and capital of the converting limited liability company  
36 as of the effective time of the conversion.

37 (2) Pursuant to a conversion into an other business entity or  
38 foreign other business entity not specified in paragraph (1), both  
39 of the following occur:

1 (A) Each limited liability company interest of the same class is  
2 treated equally with respect to any distribution of cash, property,  
3 rights, interests, or securities of the converted entity, unless all  
4 members of the class consent.

5 (B) The nonredeemable limited liability company interests of  
6 the converting limited liability company are converted only into  
7 nonredeemable interests or securities of the converted entity, unless  
8 all holders of the unredeemable interests consent.

9 (b) The conversion of a limited liability company to an other  
10 business entity or a foreign other business entity or a foreign  
11 limited liability company may be effected only if both of the  
12 following conditions are satisfied:

13 (1) The law under which the converted entity will exist expressly  
14 permits the formation of that entity pursuant to a conversion.

15 (2) The limited liability company complies with all other  
16 requirements of any other law that applies to conversion to the  
17 converted entity.

18 17710.03. (a) A limited liability company that desires to  
19 convert to an other business entity or a foreign other business  
20 entity or a foreign limited liability company shall approve a plan  
21 of conversion.

22 The plan of conversion shall state all of the following:

23 (1) The terms and conditions of the conversion.

24 (2) The place of the organization of the converted entity and of  
25 the converting limited liability company and the name of the  
26 converted entity after conversion.

27 (3) The manner of converting the membership interests of each  
28 of the members into shares of, securities of, or interests in, the  
29 converted entity.

30 (4) The provisions of the governing documents for the converted  
31 entity, including the limited liability company articles of  
32 organization and operating agreement, or articles or certificate  
33 of incorporation if the converted entity is a corporation, to which  
34 the holders of interests in the converted entity are to be bound.

35 (5) Any other details or provisions that are required by the laws  
36 under which the converted entity is organized, or that are desired  
37 by the parties.

38 (b) (1) The plan of conversion shall be approved by all  
39 managers and a majority in interest of each class of membership  
40 interest or if there are no managers, a majority in interest of each

1 *class of membership of the converting limited liability company,*  
2 *unless a greater or lesser approval is required by the operating*  
3 *agreement of the converting limited liability company.*

4 *(2) However, if the members of the limited liability company*  
5 *would become personally liable for any obligations of the*  
6 *converted entity as a result of the conversion, the plan of*  
7 *conversion shall be approved by all of the limited members of the*  
8 *converting limited liability company, unless the plan of conversion*  
9 *provides that all members will have dissenters' rights as provided*  
10 *in Article 11 (commencing with Section 17711.01).*

11 *(c) Upon the effectiveness of the conversion, all members of the*  
12 *converting limited liability company, except those that exercise*  
13 *dissenters' rights as provided in Article 11 (commencing with*  
14 *Section 17711.01), shall be deemed parties to any governing*  
15 *documents for the converted entity adopted as part of the plan of*  
16 *conversion, regardless of whether or not the member has executed*  
17 *the plan of conversion or the governing documents for the*  
18 *converted entity. Any adoption of governing documents made*  
19 *pursuant to the conversion shall be effective at the effective time*  
20 *or date of the conversion.*

21 *(d) Notwithstanding its prior approval, a plan of conversion*  
22 *may be amended before the conversion takes effect if the*  
23 *amendment is approved by all managers and a majority of the*  
24 *members or if there are no managers, a majority of the members*  
25 *of the converting limited liability company and, if the amendment*  
26 *changes any of the principal terms of the plan of conversion, the*  
27 *amendment is approved by the managers and members of the*  
28 *converting limited liability company in the same manner and to*  
29 *the same extent as required for the approval of the original plan*  
30 *of conversion.*

31 *(e) The managers by unanimous approval and the members of*  
32 *a converting limited liability company may, by majority approval*  
33 *at any time before the conversion is effective, in their discretion,*  
34 *abandon a conversion, without further approval by the managers*  
35 *or members, subject to the contractual rights of third parties other*  
36 *than managers or members.*

37 *(f) The converted entity shall keep the plan of conversion at the*  
38 *principal place of business of the converted entity if the converted*  
39 *entity is a domestic limited liability company or foreign other*  
40 *business entity, at the principal executive office of, or registrar or*

1 transfer agent of, the converted entity, if the converted entity is a  
2 domestic corporation, or at the office where records are to be kept  
3 pursuant to Section 17701.13 if the converted entity is a domestic  
4 limited liability company. Upon the request of a member of a  
5 converting limited liability company, the authorized person on  
6 behalf of the converted entity shall promptly deliver to the member  
7 or the holder of shares, interests, or other securities, at the expense  
8 of the converted entity, a copy of the plan of conversion. A waiver  
9 by a member of the rights provided in this subdivision shall be  
10 unenforceable.

11 17710.04. (a) A conversion into an other business entity or a  
12 foreign other business entity or a foreign limited liability company  
13 shall become effective upon the earliest date that all of the  
14 following occur:

15 (1) The plan of conversion is approved by the members of the  
16 converting limited liability company, as provided in Section  
17 17710.03.

18 (2) All documents required by law to create the converted entity  
19 are filed, which documents shall also contain a statement of  
20 conversion, if required under Section 17710.06.

21 (3) The effective date, if set forth in the plan of conversion,  
22 occurs.

23 (b) A copy of the statement of limited liability company authority  
24 or articles of organization complying with Section 17710.06, if  
25 applicable, duly certified by the Secretary of State, is conclusive  
26 evidence of the conversion of the limited liability company.

27 17710.05. (a) If the limited liability company is converting  
28 into a foreign limited liability company or foreign other business  
29 entity, those conversion proceedings shall be in accordance with  
30 the laws of the state or place of organization of the foreign limited  
31 liability company or foreign other business entity and the  
32 conversion shall become effective in accordance with that law.

33 (b) (1) To enforce an obligation of a limited liability company  
34 that has converted to a foreign limited liability company or foreign  
35 other business entity, the Secretary of State shall only be the agent  
36 for service of process in an action or proceeding against that  
37 converted foreign entity, if the agent designated for the service of  
38 process for that entity is a natural person and cannot be found  
39 with due diligence or if the agent is a corporation and no person,  
40 to whom delivery may be made, may be located with due diligence,

1 *or if no agent has been designated and if none of the officers,*  
2 *members, managers, or agents of that entity may be located after*  
3 *diligent search, and it is shown by affidavit to the satisfaction of*  
4 *the court. The court then may make an order that service be made*  
5 *by personal delivery to the Secretary of State or to an assistant or*  
6 *deputy Secretary of State of two copies of the process together*  
7 *with two copies of the order, and the order shall set forth an*  
8 *address to which the process shall be sent by the Secretary of State.*  
9 *Service in this manner is deemed complete on the 10th day after*  
10 *delivery of the process to the Secretary of State.*

11 *(2) Upon receipt of the process and order and the fee set forth*  
12 *in Section 12206 of the Government Code, the Secretary of State*  
13 *shall provide notice to that entity of the service of the process by*  
14 *forwarding by certified mail, return receipt requested, a copy of*  
15 *the process and order to the address specified in the order.*

16 *(3) The Secretary of State shall keep a record of all process*  
17 *served upon the Secretary of State and shall record the time of*  
18 *service and the Secretary of State's action with respect to the*  
19 *process served. The certificate of the Secretary of State, under the*  
20 *Secretary of State's official seal, certifying to the receipt of process,*  
21 *the providing of notice of process to that entity, and the forwarding*  
22 *of the process shall be competent and prima facie evidence of the*  
23 *matters stated therein.*

24 *17710.06. (a) Upon conversion of a limited liability company,*  
25 *one of the following applies:*

26 *(1) If the limited liability company is converting into a domestic*  
27 *limited partnership, a statement of conversion shall be completed*  
28 *on a certificate of limited partnership for the converted entity and*  
29 *shall be filed with the Secretary of State.*

30 *(2) If the limited liability company is converting into a domestic*  
31 *partnership, a statement of conversion shall be completed on the*  
32 *statement of partnership authority for the converted entity. If no*  
33 *statement of partnership authority is filed, a certificate of*  
34 *conversion shall be filed separately with the Secretary of State.*

35 *(3) If the limited liability company is converting into a domestic*  
36 *corporation, a statement of conversion shall be completed on the*  
37 *articles of incorporation for the converted entity and shall be filed*  
38 *with the Secretary of State.*

1     (4) *If the limited liability company is converting to a foreign*  
2 *limited liability company or foreign other business entity, a*  
3 *certificate of conversion shall be filed with the Secretary of State.*

4     (b) *Any certificate or statement of conversion shall be executed*  
5 *and acknowledged by all members, unless a lesser number is*  
6 *provided in the articles of organization or operating agreement,*  
7 *and shall set forth all of the following:*

8     (1) *The name and the Secretary of State's file number of the*  
9 *converting limited liability company.*

10    (2) *A statement that the principal terms of the plan of conversion*  
11 *were approved by a vote of the members, that equaled or exceeded*  
12 *the vote required under Section 17710.03, specifying each class*  
13 *entitled to vote and the percentage vote required of each class.*

14    (3) *The form of organization of the converted entity.*

15    (4) *The mailing address of the converted entity's agent for*  
16 *service of process and the chief executive office of the converted*  
17 *entity.*

18    (c) *The filing with the Secretary of State of a certificate of*  
19 *conversion or a statement of partnership authority, articles of*  
20 *organization, or articles of incorporation containing a statement*  
21 *of conversion as set forth in subdivision (a) shall have the effect*  
22 *of the filing of a certificate of cancellation by the converting limited*  
23 *liability company, and no converting limited liability company*  
24 *that has made the filing is required to take any action under Article*  
25 *7 (commencing with Section 17707.01) as a result of that*  
26 *conversion.*

27    17710.07. (a) *Whenever a limited liability company or other*  
28 *business entity having any real property in this state converts into*  
29 *a limited liability company or an other business entity pursuant*  
30 *to the laws of this state or of the state or place where the limited*  
31 *liability company or other business entity was organized, and the*  
32 *laws of the state or place of organization, including this state, of*  
33 *the converting limited liability company or other converting entity*  
34 *provide substantially that the conversion vests in the converted*  
35 *limited liability company or other converted entity all the real*  
36 *property of the converting limited liability company or other*  
37 *converting entity, the filing for record in the office of the county*  
38 *recorder of any county in this state where any of the real property*  
39 *of the converting limited liability company or other converting*  
40 *entity is located shall evidence record ownership in the converted*

1 *limited liability company or other converted entity of all interest*  
2 *of the converting limited liability company or other converting*  
3 *entity in and to the real property located in that county if both of*  
4 *the following apply:*

5 *(1) A certificate of conversion or statement of partnership*  
6 *authority, certificate of limited partnership, or articles of*  
7 *organization complying with Section 17710.06, in the form*  
8 *prescribed and certified by the Secretary of State.*

9 *(2) A copy of a certificate of conversion on a statement of limited*  
10 *partnership authority, certificate of limited partnership, articles*  
11 *of organization, articles of incorporation, or other certificate or*  
12 *document evidencing the creation of a foreign other business entity*  
13 *or foreign limited liability company by conversion, containing a*  
14 *statement of conversion, certified by the Secretary of State or an*  
15 *authorized public official of the state or place pursuant to the laws*  
16 *of which the conversion is effected.*

17 *(b) A filed and, if appropriate, recorded certificate of conversion*  
18 *or a statement of partnership authority, certificate of limited*  
19 *partnership, articles of organization, articles or certificate of*  
20 *incorporation, or other certificate evidencing the creation of a*  
21 *foreign other business entity or foreign limited liability company*  
22 *by conversion, containing a statement of conversion, filed pursuant*  
23 *to subdivision (a) of Section 17710.06, stating the name of the*  
24 *converting limited liability company or other converting entity in*  
25 *whose name property was held before the conversion and the name*  
26 *of the converted entity or converted limited liability company, but*  
27 *not containing all of the other information required by Section*  
28 *17710.06, operates with respect to the entities named to the extent*  
29 *provided in subdivision (a).*

30 *(c) Recording of a certificate of conversion, or a statement of*  
31 *partnership authority, certificate of limited partnership, articles*  
32 *of organization, articles of incorporation, or other certificate*  
33 *evidencing the creation of an other business entity or a limited*  
34 *liability company by conversion, containing a statement of*  
35 *conversion, in accordance with subdivision (a), shall create, in*  
36 *favor of bona fide purchasers or encumbrances for value, a*  
37 *conclusive presumption that the conversion was validly completed.*

38 *17710.08. (a) An other business entity or a foreign other*  
39 *business entity or a foreign limited liability company may be*  
40 *converted to a domestic limited liability company pursuant to this*

1 article only if the converting entity is authorized by the laws  
2 pursuant to which it is organized to effect the conversion.

3 (b) An other business entity or a foreign other business entity  
4 or a foreign limited liability company that desires to convert into  
5 a domestic limited liability company shall approve a plan of  
6 conversion or another instrument as is required to be approved  
7 to effect the conversion pursuant to the laws under which that  
8 entity is organized.

9 (c) The conversion of an other business entity or a foreign other  
10 business entity or a foreign limited liability company into a  
11 domestic limited liability company shall be approved by the number  
12 or percentage of the members, managers, shareholders, or holders  
13 of interest of the converting entity as is required by the laws under  
14 which that entity is organized, or a greater or lesser percentage,  
15 subject to applicable laws, as set forth in the converting entity's  
16 partnership agreement, articles of organization, operating  
17 agreement, articles or certificate of incorporation, or other  
18 governing document.

19 (d) The conversion by an other business entity or a foreign other  
20 business entity or a foreign limited liability company into a  
21 domestic limited liability company shall be effective under this  
22 article at the time the conversion is effective under the laws under  
23 which the converting entity is organized, as long as the articles of  
24 organization containing a statement of conversion has been filed  
25 with the Secretary of State. If the converting entity's governing  
26 law is silent as to the effectiveness of the conversion, the conversion  
27 shall be effective upon the completion of all acts required under  
28 this title to form a limited liability company.

29 (e) The filing with the Secretary of State of a certificate of  
30 conversion or articles of organization containing a statement of  
31 conversion pursuant to subdivision (a) shall have the effect of the  
32 filing of a certificate of cancellation by the converting foreign  
33 limited liability company or foreign limited liability company and  
34 no converting foreign limited liability company or foreign limited  
35 liability company that has made the filing is required to take any  
36 action under Article 7 (commencing with Section 17701.01)  
37 concerning dissolution as a result of that conversion. If a  
38 converting other business entity is a foreign corporation qualified  
39 to transact business in this state, the foreign corporation shall, by

1 virtue of the filing, automatically surrender its right to transact  
2 intrastate business.

3 17710.09. (a) An entity that converts into another entity  
4 pursuant to this article is for all purposes other than for the  
5 purposes of Part 10 (commencing with Section 17701), Part 10.20  
6 (commencing with Section 18401), and Part 11 (commencing with  
7 Section 23001) of Division 2 of the Revenue and Taxation Code,  
8 the same entity that existed before the conversion and the  
9 conversion shall not be deemed a transfer of property.

10 (b) Upon a conversion taking effect, all of the following apply:

11 (1) All the rights and property, whether real, personal, or mixed,  
12 of the converting entity or converting limited liability company  
13 are vested in the converted entity or converted limited liability  
14 company.

15 (2) All debts, liabilities, and obligations of the converting entity  
16 or converting limited liability company continue as debts,  
17 liabilities, and obligations of the converted entity or converted  
18 limited liability company.

19 (3) All rights of creditors and liens upon the property of the  
20 converting entity or converting limited liability company shall be  
21 preserved unimpaired and remain enforceable against the  
22 converted entity or converted limited liability company to the same  
23 extent as against the converting entity or converting limited liability  
24 company as if the conversion had not occurred.

25 (4) Any action or proceeding pending by or against the  
26 converting entity or converting limited liability company may be  
27 continued against the converted entity or converted limited liability  
28 company as if the conversion had not occurred.

29 (c) A member of a converting limited liability company is liable  
30 for all of the following:

31 (1) All obligations of the converting limited liability company  
32 for which the member was personally liable before the conversion.

33 (2) All obligations of the converted entity incurred after the  
34 conversion takes effect, but those obligations may be satisfied only  
35 out of property of the entity if that member of a limited liability  
36 company, or a shareholder in a corporation, or unless expressly  
37 provided otherwise in the articles of organization or other  
38 governing documents, a limited partner of a limited partnership,  
39 or a holder of equity securities in another converted entity if the  
40 holders of equity securities in that entity are not personally liable

1 *for the obligations of that entity under the law under which the*  
2 *entity is organized or its governing documents.*

3 *(3) A member of a converted limited liability company remains*  
4 *liable for any and all obligations of the converting entity for which*  
5 *the member was personally liable before the conversion, but only*  
6 *to the extent that the member was liable for the obligations of the*  
7 *converting entity prior to the conversion.*

8 *17710.10. Mergers of limited liability companies shall be*  
9 *governed by Sections 17710.11 to 17710.19, inclusive.*

10 *17710.11. The following entities may be merged pursuant to*  
11 *this article:*

12 *(a) Two or more limited liability companies into one limited*  
13 *liability company.*

14 *(b) One or more limited liability companies and one or more*  
15 *other business entities into one of those other business entities.*

16 *(c) (1) One or more limited liability companies and one or more*  
17 *other business entities into one limited liability company.*

18 *(2) Notwithstanding this section, the merger of any number of*  
19 *limited liability companies with any number of other business*  
20 *entities may be effected only if the other business entities that are*  
21 *organized in California are authorized by the laws under which*  
22 *they are organized to effect the merger, and the following apply:*

23 *(A) If a limited liability company is the surviving limited liability*  
24 *company, the foreign other business entities are not prohibited by*  
25 *the laws under which they are organized from effecting that*  
26 *merger.*

27 *If a foreign limited liability company or foreign other business*  
28 *entity is the survivor of the merger, the laws of the jurisdiction*  
29 *under which the survivor is organized authorize that merger.*  
30 *Notwithstanding the first sentence of this paragraph, if one or*  
31 *more domestic corporations is also a party to the merger described*  
32 *in that sentence, the merger may be effected only if, with respect*  
33 *to any foreign other business entity that is a corporation, the*  
34 *foreign corporation is authorized by the laws under which it is*  
35 *organized to effect that merger.*

36 *17710.12. (a) Each limited liability company and other*  
37 *business entity that desires to merge shall approve an agreement*  
38 *of merger.*

39 *The agreement of merger shall be approved by all managers*  
40 *and a majority in interest of each class of membership interests*

1 of each constituent limited liability company, unless a greater  
2 approval is required by the operating agreement of the constituent  
3 limited liability company. Notwithstanding the previous sentence,  
4 if the members of any constituent limited liability company become  
5 personally liable for any obligations of a constituent limited  
6 liability company or constituent other business entity as a result  
7 of the merger, the principal terms of the agreement of merger shall  
8 be approved by all of the members of the constituent limited  
9 liability company, unless the agreement of merger provides that  
10 all members shall have the dissenters' rights provided in Article  
11 11 (commencing with Section 17711.01). The agreement of merger  
12 shall be approved on behalf of each constituent other business  
13 entity by those persons required to approve the merger by the laws  
14 under which it is organized. Other persons, including a parent of  
15 a constituent limited liability company, may be parties to the  
16 agreement of merger. The agreement of merger shall state all of  
17 the following:

18 (1) The terms and conditions of the merger.

19 (2) The name and place of the organization of the surviving  
20 limited liability company or surviving other business entity, and  
21 of each disappearing limited liability company and disappearing  
22 other business entity, and the agreement of merger may change  
23 the name of the surviving limited liability company, the new name  
24 may be the same as or similar to the name of a disappearing  
25 domestic or foreign limited liability company, subject to Section  
26 17710.08.

27 (3) The manner of converting the membership interests of each  
28 of the constituent limited liability companies into interests, shares,  
29 or other securities of the surviving limited liability company or  
30 surviving other business entity, and if limited liability company  
31 interests of any of the constituent limited liability companies are  
32 not to be converted solely into interests, shares, or other securities  
33 of the surviving limited liability company or surviving other  
34 business entity, the cash, property, rights, interests, or securities  
35 that the holders of the limited liability company interests are to  
36 receive in exchange for the membership interests, the cash,  
37 property, rights, interests, or securities that may be in addition to  
38 or in lieu of interests, shares, or other securities of the surviving  
39 limited liability company or surviving other business entity, or

1 *that the liability company interests are canceled without*  
2 *consideration.*

3 *(4) Any other details or provisions that are required by the laws*  
4 *under which any constituent other business entity is organized,*  
5 *including, if a domestic corporation is a party to the merger, as*  
6 *provided in subdivision (b) of Section 17711.13.*

7 *(5) Any other details or provisions that are desired, including,*  
8 *without limitation, a provision for the treatment of fractional*  
9 *membership interests.*

10 *(b) (1) Each membership interest of the same class of any*  
11 *constituent limited liability company, other than a membership*  
12 *interest in another constituent limited liability company that is*  
13 *being canceled and that is held by a constituent limited liability*  
14 *company or its parent or a limited liability company of which the*  
15 *constituent limited liability company is a parent shall, unless all*  
16 *members of the class consent, be treated equally with respect to*  
17 *any distribution of cash, property, rights, interests, or securities.*

18 *(2) Notwithstanding paragraph (1), except in a merger of a*  
19 *limited liability company with a limited liability company that*  
20 *controls at least 90 percent of the membership interests entitled*  
21 *to vote with respect to the merger, the unredeemable membership*  
22 *interests of a constituent limited liability company may be*  
23 *converted only into unredeemable interests or securities of the*  
24 *surviving limited liability company or other business entity, or a*  
25 *parent if a constituent limited liability company or a constituent*  
26 *other business entity or its parent owns, directly or indirectly,*  
27 *prior to the merger, membership interests of another constituent*  
28 *limited liability company or interests or securities of a constituent*  
29 *other business entity representing more than 50 percent of the*  
30 *interests or securities entitled to vote with respect to the merger*  
31 *of the other constituent limited liability company or constituent*  
32 *other business entity or more than 50 percent of the voting power,*  
33 *as defined in Section 194.5, of a constituent other business entity*  
34 *that is a domestic corporation, unless all of the members of the*  
35 *class consent.*

36 *(3) This subdivision shall apply only to constituent limited*  
37 *liability companies with over 35 members.*

38 *(c) Notwithstanding its prior approval, an agreement of merger*  
39 *may be amended prior to the filing of the certificate of merger or*  
40 *the agreement of merger, as provided in Section 17710.14, if the*

1 amendment is approved by the managers and members of each  
2 constituent limited liability company in the same manner as  
3 required for approval of the original agreement of merger and, if  
4 the amendment changes any of the principal terms of the agreement  
5 of merger, the amendment is approved by the managers and  
6 members of each constituent limited liability company in the same  
7 manner and to the same extent as required for the approval of the  
8 original agreement of merger, and by each of the constituent other  
9 business entities.

10 (d) The managers and members of a constituent limited liability  
11 company may, in their discretion, abandon a merger, subject to  
12 the contractual rights, if any, of third parties, including other  
13 constituent limited liability companies and constituent other  
14 business entities, without further approval by the membership  
15 interests, at any time before the merger is effective.

16 (e) An agreement of merger approved in accordance with  
17 subdivision (a) may do the following:

18 (1) Effect any amendment to the operating agreement of any  
19 constituent limited liability company.

20 (2) Effect the adoption of a new operating agreement for a  
21 constituent limited liability company if it is the surviving limited  
22 liability company in the merger. Any amendment to an operating  
23 agreement or adoption of a new operating agreement made  
24 pursuant to the foregoing sentence shall be effective at the effective  
25 time or date of the merger. Notwithstanding the above provisions  
26 of this subdivision, if a greater number of members is required to  
27 approve an amendment to the operating agreement of a constituent  
28 limited liability company than is required to approve the agreement  
29 of merger pursuant to subdivision (a), and the number of members  
30 that approve the agreement of merger is less than the number of  
31 members required to approve an amendment to the operating  
32 agreement of the constituent limited liability company, any  
33 amendment to the operating agreement or adoption of a new  
34 operating agreement of that constituent limited liability company  
35 made pursuant to the first sentence of this subdivision shall be  
36 effective only if the agreement of merger provides that all of the  
37 members shall have the dissenters' rights provided in Article 11  
38 (commencing with Section 17711.01).

39 (f) The surviving limited liability company or surviving other  
40 business entity shall keep the agreement of merger at its designated

1 office or at the business address specified in paragraph (5) of  
2 subdivision (a) of Section 17710.14, as applicable, and, upon the  
3 request of a member of a constituent limited liability company or  
4 a holder of shares, interests, or other securities of a constituent  
5 other business entity, the managers or members of the surviving  
6 limited liability company or the authorized person of the surviving  
7 other business entity shall promptly deliver to the member or the  
8 holder of shares, interests, or other securities, at the expense of  
9 the surviving limited liability company or surviving other business  
10 entity, a copy of the agreement of merger. A waiver by a member  
11 or holder of shares, interests, or other securities of the rights  
12 provided in this subdivision shall be unenforceable.

13 17710.13. Subdivision (b) of Section 17710.12 shall not apply  
14 to any transaction if the commissioner has approved the terms and  
15 conditions of the transaction and the fairness of such terms and  
16 conditions pursuant to Section 25142.

17 17710.14. (a) If the surviving entity is a limited liability  
18 company or an other business entity, other than a corporation in  
19 a merger in which a domestic corporation is a constituent party,  
20 after approval of a merger by the constituent limited liability  
21 companies and any constituent other business entities, the  
22 constituent limited liability companies and constituent other  
23 business entities shall file a certificate of merger in the office of,  
24 and on a form prescribed by, the Secretary of State. The certificate  
25 of merger shall be executed and acknowledged by each domestic  
26 constituent limited liability company by all managers, or if none,  
27 all members unless a lesser number is provided in the articles of  
28 organization or operating agreement of the domestic constituent  
29 limited liability company and by each foreign constituent limited  
30 liability company by one or more managers, or if none, members,  
31 and by each constituent other business entity by those persons  
32 required to execute the certificate of merger by the laws under  
33 which the constituent other business entity is organized. The  
34 certificate of merger shall set forth all of the following:

35 (1) The names and the Secretary of State's file numbers, if any,  
36 of each of the constituent limited liability companies and  
37 constituent other business entities, separately identifying the  
38 disappearing limited liability companies and disappearing other  
39 business entities and the surviving limited liability company or  
40 surviving other business entity.

1     (2) If a vote of the members was required pursuant to Section  
2     17710.12, a statement setting forth the total number of outstanding  
3     interests of each class entitled to vote on the merger and that the  
4     principal terms of the agreement of merger were approved by a  
5     vote of the number of interests of each class that equaled or  
6     exceeded the vote required, specifying each class entitled to vote  
7     and the percentage vote required of each class.

8     (3) If the surviving entity is a limited liability company and not  
9     an other business entity, any change required to the information  
10    set forth in the articles of organization of the surviving limited  
11    liability company resulting from the merger, including any change  
12    in the name of the surviving limited liability company resulting  
13    from the merger. The filing of a certificate of merger setting forth  
14    any such changes to the articles of organization of the surviving  
15    limited liability company shall have the effect of the filing of a  
16    certificate of amendment by the surviving limited liability company,  
17    and the surviving limited liability company need not file an  
18    amendment under Section 17702.02 to reflect those changes.

19    (4) The future effective date, that shall be a date certain not  
20    more than 90 days subsequent to the date of filing of the merger,  
21    if the merger is not to be effective upon the filing of the certificate  
22    of merger with the office of the Secretary of State.

23    (5) If the surviving entity is an other business entity or a foreign  
24    limited liability company, the full name of the entity, type of entity,  
25    legal jurisdiction where the entity was organized and by whose  
26    laws its internal affairs are governed, and the address of the  
27    principal place of business of the entity.

28    (6) Any other information required to be stated in the certificate  
29    of merger by the laws where each constituent other business entity  
30    is organized, including, if a domestic corporation is a party to the  
31    merger, as required under paragraph (2) of subdivision (g) of  
32    Section 17711.13. If the surviving entity is a foreign limited liability  
33    company in a merger where a domestic corporation is a  
34    disappearing other business entity, a copy of the agreement of  
35    merger and attachments as required under paragraph (1) of  
36    subdivision (g) of Section 17711.13 shall be filed at the same time  
37    as the filing of the certificate of merger.

38    (b) If the surviving entity is a domestic corporation or a foreign  
39    corporation in a merger that a domestic corporation is a  
40    constituent party, after approval of the merger by the constituent

1 *limited liability companies and constituent other business entities,*  
2 *the surviving corporation shall file in the office of the Secretary*  
3 *of State a copy of the agreement of merger and attachments*  
4 *required under paragraph (1) of subdivision (g) of Section*  
5 *17711.13. The certificate of merger shall be executed and*  
6 *acknowledged by each domestic constituent limited liability*  
7 *company by all general members, unless a lesser number is*  
8 *provided in the articles of organization of limited liability company*  
9 *of the domestic constituent limited liability company.*

10 *(c) A certificate of merger or the agreement of merger, as is*  
11 *applicable under subdivisions (a) and (b), shall have the effect of*  
12 *the filing of a certificate of cancellation for each disappearing*  
13 *limited liability company, and no disappearing limited liability*  
14 *company need take any action under Article 7 (commencing with*  
15 *Section 17707.01) concerning dissolution as a result of the merger.*

16 *(d) If the organization disappearing into the other business*  
17 *entity is a foreign corporation qualified to transact intrastate*  
18 *business in this state, a certificate of satisfaction of the Franchise*  
19 *Tax Board as required by Section 23334 of the Revenue and*  
20 *Taxation Code shall be filed with the certificate of merger or*  
21 *agreement of merger, as is applicable under subdivisions (a) and*  
22 *(b).*

23 *By the filing of the certificate of merger or agreement of merger,*  
24 *as is applicable, the foreign corporation shall automatically*  
25 *surrender its right to transact intrastate business.*

26 *17710.15. (a) Unless a future effective date is provided in a*  
27 *certificate of merger or the agreement of merger, if an agreement*  
28 *of merger is required to be filed under Section 17710.14, in which*  
29 *event the merger shall be effective at that future effective date, a*  
30 *merger shall be effective upon the filing of the certificate of merger*  
31 *or the agreement of merger, as is applicable, in the office of the*  
32 *Secretary of State.*

33 *(b) (1) For all purposes, a copy of the certificate of merger*  
34 *duly certified by the Secretary of State is conclusive evidence of*  
35 *the merger of the constituent limited liability companies, either by*  
36 *themselves or together with constituent other business entities,*  
37 *into the surviving other business entity, or the constituent limited*  
38 *liability companies or the constituent other business entities, or*  
39 *both, into the surviving limited liability company.*

1     (2) *In a merger in which the surviving entity is a corporation*  
2 *in a merger in which a domestic corporation and a domestic limited*  
3 *liability company are parties to the merger, a copy of an agreement*  
4 *of merger certified on or after the effective date by an official*  
5 *having custody thereof has the same force in evidence as the*  
6 *original and, except as against the state, is conclusive evidence of*  
7 *the performance of all conditions precedent to the merger, the*  
8 *existence on the effective date of the surviving corporation, and*  
9 *the performance of the conditions necessary to the adoption of any*  
10 *amendment to the articles of incorporation of the surviving*  
11 *corporation, if applicable, contained in the agreement of merger.*

12     17710.16. (a) *Upon a merger of limited liability companies*  
13 *or limited liability companies and other business entities pursuant*  
14 *to this chapter, the separate existence of the disappearing limited*  
15 *liability companies and disappearing other business entities ceases*  
16 *and the surviving limited liability company or surviving other*  
17 *business entity shall succeed, without other transfer, act or deed,*  
18 *to all the rights and property, whether real, personal, or mixed,*  
19 *of each of the disappearing limited liability companies and*  
20 *disappearing other business entities, and shall be subject to all*  
21 *the debts and liabilities of each in the same manner as if the*  
22 *surviving limited liability company or surviving other business*  
23 *entity had itself incurred them.*

24     (b) *All rights of creditors and all liens upon the property of each*  
25 *of the constituent limited liability companies and constituent other*  
26 *business entities shall be preserved unimpaired and may be*  
27 *enforced against the surviving limited liability company or the*  
28 *surviving other business entity to the same extent as if the debt,*  
29 *liability, or duty which gave rise to that lien had been incurred or*  
30 *contracted by the surviving limited liability company or the*  
31 *surviving other business entity, provided that such liens upon the*  
32 *property of a disappearing limited liability company or*  
33 *disappearing other business entity shall be limited to the property*  
34 *affected thereby immediately prior to the time the merger is*  
35 *effective.*

36     (c) *Any action or proceeding pending by or against any*  
37 *disappearing limited liability company or disappearing other*  
38 *business entity may be prosecuted to judgment, which shall bind*  
39 *the surviving limited liability company or surviving other business*  
40 *entity, or the surviving limited liability company or surviving other*

1 *business entity may be proceeded against or be substituted in the*  
2 *place of the disappearing limited liability company or disappearing*  
3 *other business entity.*

4 *(d) Nothing in this article is intended to affect the liability a*  
5 *member of a disappearing limited liability company may have in*  
6 *connection with the debts and liabilities of the disappearing limited*  
7 *liability company existing prior to the time the merger is effective.*

8 *17710.17. (a) If the surviving entity is a domestic limited*  
9 *liability company or a domestic other business entity, the merger*  
10 *proceedings with respect to that limited liability company or other*  
11 *business entity and any domestic disappearing limited liability*  
12 *company shall conform to the provisions of this chapter governing*  
13 *the merger of domestic limited liability companies, but if the*  
14 *surviving entity is a foreign limited liability company or a foreign*  
15 *other business entity, then, subject to the requirements of*  
16 *subdivision (d) and Article 11 (commencing with Section 17711.01)*  
17 *and, with respect to any domestic constituent corporation, Section*  
18 *17711.13, and Chapter 12 (commencing with Section 17712.00)*  
19 *and Chapter 13 (commencing with Section 17713.00) of Division*  
20 *1 of Title 1, the merger proceedings may be in accordance with*  
21 *the laws of the state or place of organization of the surviving*  
22 *limited liability company or surviving other business entity.*

23 *(b) If the surviving entity is a domestic limited liability company*  
24 *or domestic other business entity, other than a domestic*  
25 *corporation, the certificate of merger shall be filed as provided in*  
26 *subdivision (a) of Section 17710.14, and thereupon, subject to*  
27 *subdivision (a) of Section 17710.15, the merger shall be effective*  
28 *as to each domestic constituent limited liability company and*  
29 *domestic constituent other business entity. If the surviving entity*  
30 *is a domestic corporation, the agreement of merger with*  
31 *attachments shall be filed pursuant to in subdivision (b) of Section*  
32 *17710.14, and thereupon, subject to subdivision (a) of Section*  
33 *17710.15, the merger shall be effective as to each domestic*  
34 *constituent limited liability company and domestic constituent*  
35 *other business entity unless another effective date is provided*  
36 *pursuant to Article 11 (commencing with Section 17711.01) of*  
37 *Division 1 of Title 1, with respect to any constituent corporation*  
38 *or constituent limited liability company.*

39 *(c) If the surviving entity is a foreign limited liability company*  
40 *or foreign other business entity, the merger shall become effective*

1 *in accordance with the law of the jurisdiction where the surviving*  
2 *limited liability company or surviving other business entity is*  
3 *organized, but shall be effective as to any domestic disappearing*  
4 *limited liability company as of the time of effectiveness in the*  
5 *foreign jurisdiction upon the filing in this state of a certificate of*  
6 *merger or agreement of merger pursuant to Section 17710.14.*

7 *(d) If a merger described in subdivision (c) or (d) also includes*  
8 *a foreign disappearing limited liability company previously*  
9 *registered for the transaction of intrastate business in this state*  
10 *pursuant to Section 17708.02, the filing of the certificate of merger*  
11 *or agreement of merger, as is applicable under Section 17710.14,*  
12 *automatically has the effect of a cancellation of registration for*  
13 *that foreign limited liability company pursuant to Section 17708.07*  
14 *without the necessity of the filing of a certificate of cancellation.*

15 *(e) The provisions of subdivision (b) of Section 17710.12 and*  
16 *Article 11 (commencing with Section 17711.01) apply to the rights*  
17 *of the members of any of the constituent limited liability companies*  
18 *that are domestic limited liability companies and of any domestic*  
19 *limited liability company that is a parent of any foreign constituent*  
20 *limited liability company.*

21 *(f) If the surviving entity is a foreign limited liability company*  
22 *or foreign other business entity, the surviving entity shall file the*  
23 *following with the Secretary of State:*

24 *(1) An agreement that it may be served in this state in a*  
25 *proceeding for the enforcement of an obligation of any constituent*  
26 *entity and in a proceeding to enforce the rights of any holder of a*  
27 *dissenting interest or dissenting shares in a constituent domestic*  
28 *limited liability company or domestic other business entity.*

29 *(2) An irrevocable appointment of the Secretary of State as its*  
30 *agent for service of process, and an address to which process may*  
31 *be forwarded.*

32 *(3) An agreement that it will promptly pay the holder of any*  
33 *dissenting interest or dissenting share in a constituent domestic*  
34 *limited liability company or domestic other business entity the*  
35 *amount to which that person is entitled under the laws of this state.*

36 *17710.18. Whenever a domestic or foreign limited liability*  
37 *company or other business entity having any real property in this*  
38 *state merges with another limited liability company or other*  
39 *business entity pursuant to the laws of this state or of the state or*  
40 *place where any constituent limited liability company or constituent*

1 other business entity was organized, and the laws of the state or  
2 place of organization, including this state of any disappearing  
3 limited liability company or disappearing other business entity  
4 provide substantially that the making and filing of the agreement  
5 of merger or certificate of merger vests in the surviving limited  
6 liability company or surviving other business entity all the real  
7 property of any disappearing limited liability company and  
8 disappearing other business entity, the filing for record in the  
9 office of the county recorder of any county in this state where any  
10 of the real property of the disappearing limited liability company  
11 or disappearing other business entity is located of either of the  
12 following shall evidence record ownership in the surviving limited  
13 liability company or surviving other business entity of all interest  
14 of the disappearing limited liability company or disappearing  
15 other business entity in and to the real property located in that  
16 county in which both of the following occur:

17 (a) A certificate of merger certified by the Secretary of State,  
18 or other certificate prescribed by the Secretary of State.

19 (b) A copy of the agreement of merger or certificate of merger,  
20 certified by the Secretary of State or an authorized public official  
21 of the state or place pursuant to the laws of which the merger is  
22 effected.

23 17710.19. Recording of the certificate of merger in accordance  
24 with Section 17710.18 shall create, in favor of bona fide purchasers  
25 or encumbrancers for value, a conclusive presumption that the  
26 merger was validly completed.

27 17710.20. (a) Upon a merger pursuant to this chapter, a  
28 surviving domestic or foreign limited liability company or other  
29 business entity shall be deemed to have assumed the liability of  
30 each disappearing domestic or foreign limited liability company  
31 or other business entity that is taxed under Part 10 (commencing  
32 with Section 17710.01) or Part 11 (commencing with Section  
33 23001) of Division 2 of the Revenue and Taxation Code for the  
34 following:

35 (1) To prepare and file, or to cause to be prepared and filed,  
36 tax and information returns otherwise required of that disappearing  
37 entity as specified in Chapter 2 (commencing with Section 18501)  
38 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

39 (2) To pay any tax liability determined to be due.

1     (b) *If the surviving entity is a domestic limited liability company,*  
2 *domestic corporation, or registered limited liability partnership*  
3 *or a foreign limited liability company, foreign limited liability*  
4 *partnership, or foreign corporation that is registered or qualified*  
5 *to do business in this state, the Secretary of State shall notify the*  
6 *Franchise Tax Board of the merger.*

7  
8                     Article 11. Dissenters' Rights  
9

10     17711.01. (a) *For purposes of this article, "reorganization"*  
11 *refers to any of the following:*

12         (1) *A conversion pursuant to Article 10 (commencing with*  
13 *Section 17710.01).*

14         (2) *A merger pursuant to Article 10 (commencing with Section*  
15 *17710.01).*

16         (3) *The acquisition by one limited liability company in exchange,*  
17 *in whole or in part, for its membership interests, or the membership*  
18 *interests or equity securities of a limited liability company or other*  
19 *business entity that is in control of the acquiring limited liability*  
20 *company, of membership interests or equity securities of another*  
21 *limited liability company or other business entity if, immediately*  
22 *after the acquisition, the acquiring limited liability company has*  
23 *control of the other limited liability company or other business*  
24 *entity.*

25         (4) *The acquisition by one limited liability company in exchange*  
26 *in whole or in part for its membership interests, or the membership*  
27 *interests or equity securities of a limited liability company or other*  
28 *business entity which is in control of the acquiring limited liability*  
29 *company, or for its debt securities, or debt securities of a limited*  
30 *liability company or other business entity which is in control of*  
31 *the acquiring limited liability company, that are not adequately*  
32 *secured and that have a maturity date in excess of five years after*  
33 *the consummation of the acquisition, or both, of all or substantially*  
34 *all of the assets of another limited liability company or other*  
35 *business entity.*

36         (b) *For purposes of this article, "control" means the possession,*  
37 *direct or indirect, of the power to direct or cause the direction of*  
38 *the management and policies of a limited liability company or*  
39 *other business entity.*

1 17711.02. (a) If the approval of outstanding membership  
2 interests is required for a limited liability company to participate  
3 in a reorganization, pursuant to the limited liability company  
4 agreement, or otherwise, then each member of the limited liability  
5 company holding those interests may, by complying with this  
6 article, require the limited liability company to purchase for cash,  
7 at its fair market value, the interest owned by the member in the  
8 limited liability company, if the interest is a dissenting interest as  
9 defined in subdivision (b). The fair market value shall be  
10 determined as of the day before the first announcement of the terms  
11 of the proposed reorganization, excluding any appreciation or  
12 depreciation in consequence of the proposed reorganization.

13 (b) As used in this article, “dissenting interest” means the  
14 interest of a member that satisfies all of the following conditions:

15 (1) Either:

16 (A) Was not, immediately prior to the reorganization, either (i)  
17 listed on any national securities exchange certified by the  
18 Commissioner of Corporations under subdivision (o) of Section  
19 25100, or (ii) listed on the list of OTC margin stocks issued by the  
20 Board of Governors of the Federal Reserve System, provided that  
21 in either instance the limited liability company whose outstanding  
22 interests are so listed provides, in its notice to members requesting  
23 their approval of the proposed reorganization, a summary of the  
24 provisions of this section and Sections 17711.03, 17711.04,  
25 17711.05, and 17711.06.

26 (B) If the interest is of a class of interests listed as described in  
27 clause (i) or (ii) of subparagraph (A), demands for payment are  
28 filed with respect to 5 percent or more of the outstanding interests  
29 of that class.

30 (2) Was outstanding on the date for the determination of  
31 members entitled to vote on the reorganization.

32 (3) Either:

33 (A) Was not voted in favor of the reorganization.

34 (B) If the interest is described in clause (i) or (ii) of  
35 subparagraph (A) of paragraph (1), was voted against the  
36 reorganization; provided, however, that subparagraph (A) rather  
37 than this subparagraph applies in any event where the approval  
38 for the proposed reorganization is sought by written consent rather  
39 than at a meeting.

1     (4) *The member has demanded that the interest be purchased*  
2 *by the limited liability company at its fair market value in*  
3 *accordance with Section 17711.03.*

4     (5) *The member has submitted the interest for endorsement, if*  
5 *applicable, in accordance with Section 17711.04.*

6     (c) *As used in this article, “dissenting member” means the*  
7 *recordholder of a dissenting interest, and includes an assignee of*  
8 *record of that interest.*

9     17711.03. (a) *If members have a right under Section 17711.02,*  
10 *subject to compliance with paragraphs (4) and (5) of subdivision*  
11 *(b) of Section 17711.02, to require the limited liability company*  
12 *to purchase their membership interests for cash, the limited liability*  
13 *company shall mail to each member a notice of the approval of*  
14 *the reorganization by the requisite vote or consent of the members,*  
15 *within 10 days after the date of the approval, accompanied by a*  
16 *copy of this section and Sections 17711.01, 17711.02, 17711.04,*  
17 *and 17711.05, a statement of the price determined by the limited*  
18 *liability company to represent the fair market value of its*  
19 *outstanding interests, and a brief description of the procedure to*  
20 *be followed if the member desires to exercise the member’s rights*  
21 *under those sections. The statement of price constitutes an offer*  
22 *by the limited liability company to purchase at the price stated*  
23 *any dissenting interests as defined in subdivision (b) of Section*  
24 *17711.02, unless they lose their status as dissenting interests under*  
25 *Section 17711.11.*

26     (b) *Any member who has a right to require the limited liability*  
27 *company to purchase the member’s interest for cash under Section*  
28 *17711.02, subject to compliance with paragraphs (4) and (5) of*  
29 *subdivision (b) of Section 17711.02, and who desires the limited*  
30 *liability company to purchase that interest, shall make written*  
31 *demand upon the limited liability company for the purchase of that*  
32 *interest and the payment to the member in cash of its fair market*  
33 *value. The demand is not effective for any purpose unless it is*  
34 *received by the limited liability company or any transfer agent*  
35 *thereof (1) in the case of interests described in clause (i) or (ii) of*  
36 *subparagraph (A) of paragraph (1) of subdivision (b) of Section*  
37 *17711.02, not later than the date of the members’ meeting to vote*  
38 *upon the reorganization, or (2) in any other case, within 30 days*  
39 *after the date on which notice of the approval of the reorganization*

1 by the requisite vote or consent of the members is mailed by the  
2 limited liability company to the members.

3 (c) The demand shall state the number or amount of the  
4 member's interest in the limited liability company and shall contain  
5 a statement of what the member claims to be the fair market value  
6 of that interest on the day before the announcement of the proposed  
7 reorganization. The statement of fair market value constitutes an  
8 offer by the member to sell the interest at such price.

9 17711.04. Within 30 days after the date on which notice of the  
10 approval of the outstanding interests of the limited liability  
11 company is mailed to the member pursuant to subdivision (a) of  
12 Section 17711.03, the member shall submit to the limited liability  
13 company at its principal office or at the office of any transfer agent  
14 thereof, if the interest is evidenced by a certificate, the member's  
15 certificate representing the interest which the member demands  
16 that the limited liability company purchase, to be stamped or  
17 endorsed with a statement that the interest is a dissenting interest  
18 or to be exchanged for certificates of appropriate denominations  
19 so stamped or endorsed, or if the interest is not evidenced by a  
20 certificate, written notice of the number or amount of interest which  
21 the member demands that the limited liability company purchase.  
22 Upon subsequent transfers of the dissenting interest on the books  
23 of the limited liability company, the new certificates or other  
24 written statement issued therefor shall bear a like statement,  
25 together with the name of the original holder of the dissenting  
26 interest.

27 17711.05. (a) If the limited liability company and the dissenting  
28 member agree that the member's interest is a dissenting interest  
29 and agree upon the price to be paid for the dissenting interest, the  
30 dissenting member is entitled to the agreed price with interest  
31 thereon at the legal rate on judgments from the date of  
32 consummation of the reorganization. All agreements fixing the  
33 fair market value of any dissenting member's interest as between  
34 the limited liability company and that member shall be in writing  
35 and filed in the records of the limited liability company.

36 (b) Subject to the provisions of Section 17711.08, payment of  
37 the fair market value for a dissenting interest shall be made within  
38 30 days after the amount has been agreed to or within 30 days  
39 after any statutory or contractual conditions to the reorganization  
40 are satisfied, whichever is later, and in the case of dissenting

1 *interests evidenced by certificates of interest, subject to surrender*  
2 *of such certificates of interest, unless provided otherwise by*  
3 *agreement.*

4 *17711.06. (a) If the limited liability company denies that a*  
5 *membership interest is a dissenting interest, or the limited liability*  
6 *company and a dissenting member fail to agree upon the fair*  
7 *market value of a dissenting interest, then the member or any*  
8 *interested limited liability company, within six months after the*  
9 *date when notice of the approval of the reorganization by the*  
10 *requisite vote or consent of the members was mailed to the member,*  
11 *but not later, may file a complaint in the superior court of the*  
12 *proper county praying the court to determine whether the interest*  
13 *is a dissenting interest, or the fair market value of the dissenting*  
14 *interest, or both, or may intervene in any action pending on such*  
15 *a complaint.*

16 *(b) Two or more dissenting members may join as plaintiffs or*  
17 *be joined as defendants in any of those actions and two or more*  
18 *of those actions may be consolidated.*

19 *(c) On the trial of the action, the court shall determine the issues.*  
20 *If the status of the membership interest as a dissenting interest is*  
21 *in issue, the court shall first determine that issue. If the fair market*  
22 *value of the dissenting interest is in issue, the court shall determine,*  
23 *or shall appoint one or more impartial appraisers to determine,*  
24 *the fair market value of the dissenting interest.*

25 *17711.07. (a) If the court appoints an appraiser or appraisers,*  
26 *they shall proceed forthwith to determine the fair market value*  
27 *per interest of the outstanding membership interests of the limited*  
28 *liability company, by class if necessary. Within the time fixed by*  
29 *the court, the appraisers, or a majority of them, shall make and*  
30 *file a report in the office of the clerk of the court. Thereupon, on*  
31 *the motion of any party, the report shall be submitted to the court*  
32 *and considered on such additional evidence as the court considers*  
33 *relevant. If the court finds the report reasonable, the court may*  
34 *confirm it.*

35 *(b) If a majority of the appraisers appointed fails to make and*  
36 *file a report within 30 days from the date of their appointment, or*  
37 *within a further time as may be allowed by the court, or the report*  
38 *is not confirmed by the court, the court shall determine the fair*  
39 *market value per interest of the outstanding membership interests*  
40 *of the limited liability company, by class if necessary.*

1     (c) Subject to Section 17711.08, judgment shall be rendered  
2     against the limited liability company for payment of an amount  
3     equal to the fair market value, as determined by the court, of each  
4     dissenting interest that any dissenting member who is a party, or  
5     has intervened, is entitled to require the limited liability company  
6     to purchase, with interest thereon at the legal rate on judgments  
7     from the date of consummation of the reorganization.

8     (d) Any of those judgments shall be payable forthwith, provided,  
9     however, that with respect to membership interests evidenced by  
10    transferable certificates of interest, only upon the endorsement  
11    and delivery to the limited liability company of those certificates  
12    representing the interests described in the judgment. Any party  
13    may appeal from the judgment.

14    (e) The costs of the action, including reasonable compensation  
15    for the appraisers, to be fixed by the court, shall be assessed or  
16    apportioned as the court considers equitable, but, if the appraisal  
17    exceeds the price offered by the limited liability company, the  
18    limited liability company shall pay the costs, including, in the  
19    discretion of the court, if the value awarded by the court for the  
20    dissenting interest is more than 125 percent of the price offered  
21    by the limited liability company under subdivision (a) of Section  
22    17711.02, attorney's fees and fees of expert witnesses.

23    17711.08. To the extent that the payment to dissenting members  
24    of the fair market value of their dissenting interests would require  
25    the dissenting members to return payment or a portion of the  
26    payment by reason of Section 17711.09 or the Uniform Fraudulent  
27    Transfer Act (Chapter 1 (commencing with Section 3439) of Title  
28    2 of Part 2 of Division 4 of the Civil Code), then that payment or  
29    portion thereof shall not be made and the dissenting members shall  
30    become creditors of the limited liability company for the amount  
31    not paid, together with interest thereon at the legal rate on  
32    judgments until the date of payment, but subordinate to all other  
33    creditors in any proceeding relating to the winding up and  
34    dissolution of the limited liability company, such debt to be payable  
35    when permissible.

36    17711.09. Any cash distributions made by a limited liability  
37    company to a dissenting member after the date of consummation  
38    of the reorganization, but prior to any payment by the limited  
39    liability company for that dissenting member's interest, shall be

1 credited against the total amount to be paid by the limited liability  
2 company for such dissenting interest.

3 17711.10. Except as expressly limited by this article, dissenting  
4 members shall continue to have all the rights and privileges  
5 incident to their interests immediately prior to the reorganization,  
6 including limited liability, until payment by the limited liability  
7 company for their dissenting interests. A dissenting member may  
8 not withdraw a demand for payment unless the limited liability  
9 company consents thereto.

10 17711.11. A dissenting interest loses its status as a dissenting  
11 interest and the holder thereof ceases to be a dissenting member  
12 and ceases to be entitled to require the limited liability company  
13 to purchase the interest upon the happening of any of the following:

14 (a) The limited liability company abandons the reorganization.  
15 Upon abandonment of the reorganization, the limited liability  
16 company shall pay, on demand, to any dissenting member who  
17 has initiated proceeding in good faith under this article, all  
18 reasonable expenses incurred in such proceedings and reasonable  
19 attorney's fees.

20 (b) The interest is transferred prior to its submission for  
21 endorsement in accordance with Section 17711.04.

22 (c) The dissenting member and the limited liability company do  
23 not agree upon the status of the interest as a dissenting interest  
24 or upon the purchase price of the dissenting interest, and neither  
25 files a complaint nor intervenes in a pending action, as provided  
26 in Section 17711.06, within six months after the date upon which  
27 notice of the approval of the reorganization by the requisite vote  
28 or consent of members was mailed to the member.

29 (d) The dissenting member, with the consent of the limited  
30 liability company, withdraws the member's demand for purchase  
31 of the dissenting interest.

32 17711.12. If litigation is instituted to test the sufficiency or  
33 regularity of the vote or consent of the members in authorizing a  
34 reorganization, any proceedings under Sections 17711.06 and  
35 17711.07 shall be suspended until final determination of that  
36 litigation.

37 17711.13. (a) This article applies to the following:

38 (1) A domestic limited liability company formed on or after  
39 January 1, 2013.

1     (2) A foreign limited liability company if the foreign limited  
2     liability company was formed on or after January 1, 2013 or filed  
3     an application to qualify to do business on or after January 1,  
4     2013, and members holding more than 50 percent of the voting  
5     power held by all members of the foreign limited liability company  
6     reside in this state.

7     (3) A limited liability company if the operating agreement so  
8     provides or if all managers and a majority of the members, if it is  
9     a manager-managed limited liability company, or a majority, if it  
10    is a member-managed liability company, determine that this article  
11    shall apply.

12    (b) This article does not apply to membership interests governed  
13    by operating agreements whose terms and provisions specifically  
14    set forth the amount to be paid in respect of those interests in the  
15    event of a reorganization of the limited liability company, or to  
16    any limited liability company with 35 or fewer members if all the  
17    members have waived the application of this chapter in writing,  
18    whether in an operating agreement or otherwise, provided that if,  
19    at the time of the reorganization, the limited liability company had  
20    more than 35 members, any waiver shall be ineffective as to that  
21    reorganization.

22    17711.14. (a) No member of a limited liability company who  
23    has a right under this article to demand payment of cash for the  
24    interest owned by a member in a limited liability company shall  
25    have any right at law or in equity to attack the validity of the  
26    reorganization, or to have the reorganization set aside or  
27    rescinded, except in an action to test whether the vote or consent  
28    of members required to authorize or approve the reorganization  
29    has been obtained in accordance with the procedures established  
30    therefor by the operating agreement of the limited liability  
31    company.

32    (b) If one of the parties to a reorganization is directly or  
33    indirectly controlled by, or under common control with, another  
34    party to the reorganization, subdivision (a) shall not apply to any  
35    member of the controlled party who has not demanded payment  
36    of cash for the member's interest pursuant to this article; but if  
37    the member institutes any action to attack the validity of the  
38    reorganization or to have the reorganization set aside or rescinded,  
39    the member shall not thereafter have any right to demand payment  
40    of cash for the member's interest pursuant to this article.

1     (c) If one of the parties to a reorganization is directly or  
2 indirectly controlled by, or under common control with, another  
3 party to the reorganization, then, in any action to attack the validity  
4 of the reorganization or to have the reorganization set aside or  
5 rescinded, both of the following apply:

6     (1) A party to a reorganization that controls another party to  
7 a reorganization shall have the burden of proving that the  
8 transaction is just and reasonable as to the members of the  
9 controlled party.

10    (2) A person that controls two or more parties to a  
11 reorganization shall have the burden of proving that the  
12 transaction is just and reasonable as to the members of any party  
13 so controlled.

14    (d) Subdivisions (b) and (c) shall not apply if a majority of the  
15 members other than members who are directly or indirectly  
16 controlled by, or under common control with, another party to the  
17 reorganization approve or consent to the reorganization.

18    (e) This section shall not prevent a member of a limited liability  
19 company that is a party to a reorganization from bringing an  
20 action against a manager of the limited liability company, the  
21 limited liability company, or any person controlling a manager at  
22 law or in equity as to any matters, including, without limitation,  
23 an action for breach of fiduciary obligation or fraud, other than  
24 to attack the validity of the reorganization or to have the  
25 reorganization set aside or rescinded.

26  
27                   Article 12. Series Provisions  
28

29     17712.01. (a) If a limited liability company complies with  
30 Section 17712.02, an operating agreement may establish or provide  
31 for the establishment of one or more designated series of assets  
32 that provides either of the following:

33     (1) Separate rights, powers, or duties with respect to specified  
34 property or obligations of the limited liability company or profits  
35 and losses of specified property or obligations.

36     (2) A separate purpose or investment objective.

37     (b) A series established in accordance with subdivision (a) may  
38 carry on any activity, whether or not for profit.

39     17712.02. (a) Subject to subdivision (b) the following apply:

1     (1) *The debts, liabilities, obligations, and expenses incurred,*  
2 *contracted for, or otherwise existing with respect to a series shall*  
3 *be enforceable against the assets of that series only, and shall not*  
4 *be enforceable against the assets of the limited liability company*  
5 *generally or any other series of the limited liability company.*

6     (2) *None of the debts, liabilities, obligations, and expenses*  
7 *incurred, contracted for, or otherwise existing with respect to the*  
8 *limited liability company generally or any other series shall be*  
9 *enforceable against the assets of a series.*

10    (b) *Subdivision (a) applies only if all of the following apply:*

11     (1) *The records maintained for that series account for the assets*  
12 *of that series separately from the other assets of the limited liability*  
13 *company or any other series.*

14     (2) *The operating agreement contains a statement regarding*  
15 *the effect of the limitations provided in subdivision (a).*

16     (3) *The limited liability company's articles of organization*  
17 *contains a statement that the limited liability company may have*  
18 *one or more series of assets subject to the limitations provided in*  
19 *subdivision (a).*

20    17712.03. (a) *Assets of a series may be held directly or*  
21 *indirectly, including being held in the name of the series, in the*  
22 *name of the limited liability company, through a nominee, or*  
23 *otherwise.*

24     (b) *If the records of a series are maintained in a manner so that*  
25 *the assets of the series can be reasonably identified by specific*  
26 *listing, category, type, quantity, or computational or allocational*  
27 *formula or procedure, including a percentage or share of any*  
28 *assets, or by any other method in which the identity of the assets*  
29 *can be objectively determined, the records are considered to satisfy*  
30 *the requirements of Section 17712.02.*

31    17712.04. *The statement of limitation on liabilities of a series*  
32 *required by Section 17712.02 is sufficient even if neither of the*  
33 *following apply at the time the statement is made:*

34     (a) *The limited liability company has established any series*  
35 *under this title when the statement of limitations is contained in*  
36 *the articles of organization.*

37     (b) *The statement of limitations makes reference to a specific*  
38 *series of the limited liability company.*

39    17712.05. (a) *Except to the extent the operating agreement*  
40 *specifically provides otherwise, a member or manager associated*

1 *with a series or a member or manager of the limited liability*  
2 *company is not liable for a debt, obligation, or liability of a series,*  
3 *including a debt, obligation, or liability under a judgment, decree,*  
4 *or court order.*

5 *(b) As provided in Section 17701.10, the operating agreement*  
6 *may expand or restrict any duties, including fiduciary duties, and*  
7 *related liabilities that a member, manager, officer, or other person*  
8 *of a series has with respect to any of the following:*

9 *(1) The series or the limited liability company.*

10 *(2) A member or manager of the series.*

11 *(3) A member or manager of the limited liability company.*

12 *17712.06. (a) An event that under this article or the operating*  
13 *agreement causes a manager to cease to be a manager with respect*  
14 *to a series does not, in and of itself, cause the manager to cease*  
15 *to be a manager of the limited liability company or with respect*  
16 *to any other series of the limited liability company.*

17 *(b) An event that under this article or the operating agreement*  
18 *causes a member to dissociate as a member of a series does not,*  
19 *in and of itself, cause the member to cease to be a member of any*  
20 *other series or terminate the continued membership of a member*  
21 *in the limited liability company or require the winding up of the*  
22 *series, regardless of whether the member was the last remaining*  
23 *member of the series.*

24 *17712.07. (a) A person has the power to dissociate as a*  
25 *member of a series at any time, rightfully or wrongfully, by*  
26 *withdrawing as a member of a series by express will under Section*  
27 *17712.08.*

28 *(b) A person's dissociation from a series is wrongful only if*  
29 *subdivision (a) of at least one of the following applies:*

30 *(1) The dissociation is in breach of an express provision of the*  
31 *operating agreement.*

32 *(2) The dissociation occurs before the termination of the series*  
33 *and at least one of the following applies:*

34 *(A) The person withdraws as a member of a series by express*  
35 *will.*

36 *(B) The person is expelled as a member of the series by judicial*  
37 *determination under Section 17712.04.*

38 *(C) The person is dissociated as a member of a series under*  
39 *subdivision (h) of Section 17712.08 by being a debtor in*  
40 *bankruptcy.*

1     (D) *In the case of a person that is not a trust other than a*  
2 *business trust, an estate or an individual, the person is expelled*  
3 *or otherwise dissociated as a member because it dissolved or*  
4 *terminated.*

5     (c) *A person that wrongfully dissociates as a member of a series*  
6 *is liable to the series and, subject to Section 17706.01, to the other*  
7 *members of that series for damages caused by the dissociation.*

8     *The liability is in addition to any other debt, obligation, or*  
9 *liability of the member of a series to the series or the other*  
10 *members of that series.*

11     17712.08. *A person is dissociated as a member of a series when*  
12 *any of the following occur:*

13     (a) *The series has notice of the person's express will to*  
14 *dissociate from the series, except if the person specifies a*  
15 *dissociation date later than the date the series had notice, the*  
16 *person is dissociated from the series on that later date.*

17     (b) *An event stated in the operating agreement as causing the*  
18 *person's dissociation from the series occurs.*

19     (c) *The person is dissociated as a member of the limited liability*  
20 *company pursuant to Section 17706.02.*

21     (d) *The person is expelled as a member of that series pursuant*  
22 *to the operating agreement.*

23     (e) *The person is expelled as a member of the series by the*  
24 *unanimous consent of the other members of that series if any of*  
25 *the following applies:*

26     (1) *It is unlawful to carry on the series' activities with the person*  
27 *as a member of that series.*

28     (2) *There has been a transfer of all of the person's transferrable*  
29 *interest other than a transfer for security purposes, or a charging*  
30 *order in effect under Section 17705.03 that has not been foreclosed.*

31     (3) *The person is a corporation and, within 90 days after the*  
32 *series notifies the person that it will be expelled as a member of*  
33 *that series because the person has filed a certificate of dissolution*  
34 *or the equivalent, or its right to conduct activities has been*  
35 *suspended by its jurisdiction of formation, the certificate of*  
36 *dissolution or the equivalent has not been revoked or its right to*  
37 *conduct activities has not been reinstated.*

38     (4) *The person is a limited liability company or partnership that*  
39 *has been dissolved and its business is being wound up.*

1     (f) *On application by the series, the person is expelled as a*  
2 *member of that series by judicial order because the person has*  
3 *done any of the following:*

4     (1) *Has engaged in, or is engaging in, wrongful conduct that*  
5 *has adversely and materially affected, or will adversely and*  
6 *materially affect, that series' activities.*

7     (2) *Has willfully or persistently committed, or is willfully and*  
8 *persistently committing, a material breach of the operating*  
9 *agreement or the person's duty or obligation under this title or*  
10 *other applicable law.*

11     (3) *Has engaged in, or is engaging in, conduct relating to that*  
12 *series' activities that makes it not reasonably practicable to carry*  
13 *on the activities with the person as a member of that series.*

14     (g) *In the case of a person who is an individual, one of the*  
15 *following applies:*

16     (1) *The person dies.*

17     (2) *In a member-managed limited liability company either a*  
18 *guardian or general conservator is appointed, or there is a judicial*  
19 *order that the person has otherwise become incapable of*  
20 *performing the person's duties as a member of a series under this*  
21 *title or the operating agreement.*

22     (h) *The person becomes a debtor in bankruptcy.*

23     (i) *In the case of a person that is a trust or is acting as a member*  
24 *by virtue of being a trustee of a trust, the trust's entire transferrable*  
25 *interest is distributed, but not solely by reason of the substitution*  
26 *of a successor trustee.*

27     (j) *In the case of a person that is an estate or is acting as a*  
28 *member by virtue of being a personal representative of an estate,*  
29 *the estate's entire transferrable interest, but not solely by reason*  
30 *of the substitution of a successor personal representative.*

31     (k) *In the case of a member of a series that is not an individual,*  
32 *the legal existence of the member otherwise terminates.*

33     (l) *The series terminates.*

34     17712.09. (a) *A person who has dissociated as a member of*  
35 *a series shall have no right to participate in the activities and*  
36 *affairs of that series and is entitled only to receive the distributions*  
37 *to which that member would have been entitled if the member had*  
38 *not dissociated from that series.*

39     (b) *A person's dissociation as a member of a series does not of*  
40 *itself discharge the person from any debt, obligation, or liability*

1 *to that series, the limited liability company or the other members*  
2 *that the person incurred while a member of that series.*

3 *(c) A member's dissociation from a series does not, in itself,*  
4 *cause the member to dissociate from any other series or require*  
5 *the winding up of the series unless the dissociated member was*  
6 *the last remaining member of the series.*

7 *(d) A member's dissociation from a series does not, in itself,*  
8 *cause the member to dissociate from the limited liability company.*

9 *17712.10. Except to the extent otherwise provided in the*  
10 *operating agreement, a series and its business and affairs may be*  
11 *wound up and terminated without causing the winding up of the*  
12 *limited liability company.*

13 *17712.11. (a) Except as otherwise provided, the series*  
14 *terminates on the completion of the winding up of the business*  
15 *and affairs of the series in accordance with Sections 17707.03,*  
16 *17707.04, 17707.05, and 17707.08.*

17 *(b) The limited liability company shall provide notice of the*  
18 *termination of a series in the manner provided in the operating*  
19 *agreement for notice of termination, if any.*

20 *(c) The termination of the series does not affect the limitation*  
21 *on liabilities of the series provided by Section 17712.06.*

22 *17712.12. (a) To the extent not inconsistent with this article,*  
23 *this article applies to a series and its associated members and*  
24 *managers.*

25 *(b) For purposes of the application of any other provision of*  
26 *this title to a provision of this article, and as the context requires:*

27 *(1) A reference to a "limited liability company" or a "company"*  
28 *means the series.*

29 *(2) A reference to "member" means member of a series.*

30 *(3) A reference to "manager" means manager of a series.*

### 31 32 *Article 13. Miscellaneous Provisions*

33  
34 *17713.01. In applying and construing this uniform act,*  
35 *consideration shall be given to the need to promote uniformity of*  
36 *the law with respect to its subject matter among states that enact*  
37 *it.*

38 *17713.02. This title modifies, limits, and supersedes the federal*  
39 *Electronic Signatures in Global and National Commerce Act (15*  
40 *U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede*

1 *Section 101(c) of that act (15 U.S.C. Sec. 7001(c)), or authorize*  
2 *electronic delivery of any of the notices described in Section 103(b)*  
3 *of that act (15 U.S.C. Sec. 7003(b)).*

4 *17713.03. This title does not affect an action commenced,*  
5 *proceeding brought, or right accrued before this title takes effect.*

6 *17713.04. (a) Before January 1, 2015, this title governs only*  
7 *the following:*

8 *(1) A limited liability company formed on or after January 1,*  
9 *2013.*

10 *(2) Except as otherwise provided in subdivision (c), a limited*  
11 *liability company formed before January 1, 2013, that elects, in*  
12 *the manner provided in its articles of organization and operating*  
13 *agreement or bylaw for amending the articles of organization and*  
14 *operating agreement, to be subject to this title.*

15 *(b) Except as otherwise provided in subdivision (c), on and after*  
16 *January 1, 2015, this title governs all limited liability companies.*

17 *17713.06. (a) If a manager or member required by this title*  
18 *to execute or file any document fails, after demand, to do so within*  
19 *a reasonable time or refuses to do so, any other manager or*  
20 *member, or any person appointed by a court of competent*  
21 *jurisdiction, may prepare, execute, and file that document with the*  
22 *Secretary of State.*

23 *(b) If there is any dispute concerning the filing of a document,*  
24 *or the failure to file a document, any manager or member may*  
25 *petition the superior court to direct the execution of the document.*

26 *(c) If the court finds that it is proper for the document to be*  
27 *executed and that any person so designated has failed or refused*  
28 *to execute the document, or if the court determines that any*  
29 *document should be filed, it shall order a party to file the document,*  
30 *on a form prescribed by the Secretary of State if appropriate, as*  
31 *ordered by the court.*

32 *(d) In any action under this section, if the court finds the failure*  
33 *of the manager or member to comply with the requirement to file*  
34 *any document to have been without justification, the court may*  
35 *award an amount sufficient to reimburse the managers or members*  
36 *bringing the action for the reasonable expenses incurred by them,*  
37 *including attorneys' fees, in connection with the action or*  
38 *proceeding.*

1     (e) Any member who is not a manager, or any person filing any  
2     document under this section, shall state the statutory authority  
3     after the signature on the appropriate document.

4     17713.07. (a) Every limited liability company that neglects,  
5     fails, or refuses to keep or cause to be kept or maintained the  
6     documents, books, and records required by Section 17704.11 to  
7     be kept or maintained shall be subject to a penalty of twenty-five  
8     dollars (\$25) for each day that the failure or refusal continues,  
9     beginning 30 days after receipt of written request by any member  
10    that the duty be performed, up to a maximum of one thousand five  
11    hundred dollars (\$1,500). The penalty shall be paid to the member  
12    or members jointly making the request for performance of the duty  
13    and damaged by the neglect, failure, or refusal, if suit therefor is  
14    commenced within 90 days after the written request is made; but  
15    the maximum daily penalty because of failure to comply with any  
16    number of separate requests made on any one day or for the same  
17    act shall be two hundred fifty dollars (\$250).

18    (b) Upon the failure of a limited liability company, or a foreign  
19    limited liability company registered to transact intrastate business  
20    in this state, to file the statement required by Section 17702.09,  
21    the Secretary of State shall provide a notice of that delinquency  
22    to the limited liability company or foreign limited liability company.  
23    The notice shall also contain information concerning the  
24    application of this section, advise the limited liability company or  
25    foreign limited liability company of the penalty imposed by this  
26    subdivision for failure to timely file the required statement after  
27    notice of delinquency has been provided by the Secretary of State,  
28    and shall advise the limited liability company or foreign limited  
29    liability company of its right to request relief from the Secretary  
30    of State because of reasonable cause or unusual circumstances  
31    that justify the failure to file. If, within 60 days after providing  
32    notice of the delinquency, a statement pursuant to Section 17060  
33    has not been filed by the limited liability company or foreign  
34    limited liability company, the limited liability company or foreign  
35    limited liability company shall be subject to a penalty of two  
36    hundred fifty dollars (\$250).

37    17713.08. Any penalty prescribed by Section 17713.07 shall  
38    be in addition to any remedy by injunction or action for damages  
39    or by writ of mandate for the nonperformance of acts and duties  
40    enjoined by law upon the limited liability company or its managers.

1 *The court in which an action for any penalty is brought may*  
2 *reduce, remit or suspend the penalty on any terms and conditions*  
3 *as it may deem reasonable when it is made to appear that the*  
4 *neglect, failure or refusal was inadvertent or excusable.*

5 *17713.09. (a) Upon the failure of a limited liability company*  
6 *to file the statement required by Section 17702.09, the Secretary*  
7 *of State shall provide a notice of the delinquency to the limited*  
8 *liability company. The notice shall also contain information*  
9 *concerning the application of this section, advise the limited*  
10 *liability company of the penalty imposed by Section 19141 of the*  
11 *Revenue and Taxation Code for failure to timely file the required*  
12 *statement after notice of delinquency has been mailed by the*  
13 *Secretary of State, and shall advise the limited liability company*  
14 *of its right to request relief from the Secretary of State because of*  
15 *reasonable cause or unusual circumstances that justify such failure*  
16 *to file. If, within 60 days after providing notice of the delinquency,*  
17 *a statement pursuant to Section 17702.09 has not been filed by the*  
18 *limited liability company, the Secretary of State shall certify the*  
19 *name of such limited liability company to the Franchise Tax Board.*

20 *(b) Upon certification pursuant to subdivision (a), the Franchise*  
21 *Tax Board shall assess against the limited liability company the*  
22 *penalty provided in Section 19141 of the Revenue and Taxation*  
23 *Code.*

24 *(c) The penalty provided by Section 19141 of the Revenue and*  
25 *Taxation Code shall not apply to a limited liability company that*  
26 *on or prior to the date of certification pursuant to subdivision (a)*  
27 *has dissolved or has been merged into another limited liability*  
28 *company or other business entity.*

29 *(d) The penalty herein provided shall not apply and the*  
30 *Secretary of State need not provide notice of the delinquency to a*  
31 *limited liability company the powers, rights and privileges of which*  
32 *have been suspended by the Franchise Tax Board pursuant to*  
33 *Section 23301, 23301.5, or 23775 of the Revenue and Taxation*  
34 *Code on or prior to, and remain suspended on, the last day of the*  
35 *filing period pursuant to Section 17702.09. The Secretary of State*  
36 *need not provide notice of the filing requirement pursuant to*  
37 *Section 17702.09 to a limited liability company the powers, rights*  
38 *and privileges of which have been so suspended by the Franchise*  
39 *Tax Board on or prior to, and remain suspended on, the day the*  
40 *Secretary of State prepares the notice for sending.*

1 (e) If, after certification pursuant to subdivision (a) the Secretary  
2 of State finds (1) the required statement was filed or the required  
3 fee was paid before the expiration of the 60-day period after  
4 providing notice of the delinquency, or (2) the failure to provide  
5 notice of delinquency was due to an error of the Secretary of State,  
6 the Secretary of State shall promptly decertify the name of the  
7 limited liability company to the Franchise Tax Board. The  
8 Franchise Tax Board shall then promptly abate any penalty  
9 assessed against the limited liability company pursuant to Section  
10 19141 of the Revenue and Taxation Code.

11 (f) If the Secretary of State determines that the failure of a  
12 limited liability company to file the statement required by Section  
13 17702.09 is excusable because of reasonable cause or unusual  
14 circumstances that justify such failure, the Secretary of State may  
15 waive the penalty imposed by this section and by Section 19141  
16 of the Revenue and Taxation Code, in which case the Secretary of  
17 State shall not certify the name of the limited liability company to  
18 the Franchise Tax Board, or if already certified, the Secretary of  
19 State shall promptly decertify the name of the limited liability  
20 company.

21 17713.10. (a) A limited liability company that (1) fails to file  
22 a statement pursuant to Section 17702.09 for an applicable filing  
23 period, (2) has not filed a statement pursuant to Section 17702.09  
24 during the preceding 24 months, and (3) was certified for penalty  
25 pursuant to Section 17713.09 for the same filing period, shall be  
26 subject to suspension pursuant to this section rather than to penalty  
27 pursuant to Section 17713.09.

28 (b) When subdivision (a) is applicable, the Secretary of State  
29 shall notify the limited liability company that its powers, rights,  
30 and privileges will be suspended after 60 days if it fails to file a  
31 statement pursuant to Section 17702.09.

32 (c) After the expiration of the 60-day period without any  
33 statement filed pursuant to Section 17702.09, the Secretary of State  
34 shall notify the Franchise Tax Board of the suspension, and mail  
35 a notice of the suspension to the limited liability company and  
36 thereupon, except for the purpose of amending the articles of  
37 organization to set forth a new name, the powers, rights, and  
38 privileges of the limited liability company are suspended.

39 (d) A statement pursuant to Section 17702.09 may be filed  
40 notwithstanding suspension of the powers, rights, and privileges

1 pursuant to this section or Section 23301 or 23301.5 of the Revenue  
2 and Taxation Code. Upon the filing of a statement pursuant to  
3 Section 17702.09 by a limited liability company that has suffered  
4 suspension pursuant to this section, the Secretary of State shall  
5 certify that fact to the Franchise Tax Board and the limited liability  
6 company may thereupon be relieved from suspension unless the  
7 limited liability company is held in suspension by the Franchise  
8 Tax Board by reason of Section 23301 or 23301.5 of the Revenue  
9 and Taxation Code.

10 17713.11. (a) Sections 17713.09 and 17713.10 apply to foreign  
11 limited liability companies with respect to the statements required  
12 to be filed by Section 17702.09. For this purpose, the suspension  
13 of the powers, rights, and privileges of a domestic limited liability  
14 company shall mean the forfeiture of the exercise of the powers,  
15 rights, and privileges of a foreign limited liability company in this  
16 state.

17 (b) The forfeiture of the exercise of the powers, rights, and  
18 privileges of a foreign limited liability company in this state as  
19 used in subdivision (a) does not prohibit the transaction of business  
20 in this state by a foreign limited liability company if the business  
21 transacted subsequent to the forfeiture would not, considered as  
22 an entirety, require the foreign limited liability company to obtain  
23 a certificate of registration pursuant to Section 17708.02.

24 17713.12. (a) A limited liability company is liable for a civil  
25 penalty in an amount not exceeding one million dollars  
26 (\$1,000,000) if the limited liability company does both of the  
27 following:

28 (1) Has actual knowledge that a member, officer, manager, or  
29 agent of the limited liability company does any of the following:

30 (A) Makes, publishes, or posts, or has made, published, or  
31 posted, either generally or privately to the shareholders or other  
32 persons, either of the following:

33 (i) An oral, written, or electronically transmitted report, exhibit,  
34 notice, or statement of its affairs or pecuniary condition that  
35 contains a material statement or omission that is false and intended  
36 to give membership shares in the limited liability company a  
37 materially greater or a materially less apparent market value than  
38 they really possess.

39 (ii) An oral, written, or electronically transmitted report,  
40 prospectus, account, or statement of operations, values, business,

1 *profits, or expenditures that includes a material false statement*  
2 *or omission intended to give membership shares in the limited*  
3 *liability company a materially greater or a materially less apparent*  
4 *market value than they really possess.*

5 *(B) Refuses or has refused to make any book entry or post any*  
6 *notice required by law in the manner required by law.*

7 *(C) Misstates or conceals or has misstated or concealed from*  
8 *a regulatory body a material fact in order to deceive a regulatory*  
9 *body to avoid a statutory or regulatory duty, or to avoid a statutory*  
10 *or regulatory limit or prohibition.*

11 *(2) Within 30 days after actual knowledge is acquired of the*  
12 *actions described in paragraph (1), the limited liability company*  
13 *knowingly fails to do both of the following:*

14 *(A) Notify the Attorney General or appropriate government*  
15 *agency in writing, unless the limited liability company has actual*  
16 *knowledge that the Attorney General or appropriate government*  
17 *agency has been notified.*

18 *(B) Notify its members and investors in writing, unless the*  
19 *limited liability company has actual knowledge that the members*  
20 *and investors have been notified.*

21 *(b) The requirement for notification under this section is not*  
22 *applicable if the action taken or about to be taken by the limited*  
23 *liability company, or by a member, officer, manager, or agent of*  
24 *the limited liability company under paragraph (1) of subdivision*  
25 *(a), is abated within the time prescribed for reporting, unless the*  
26 *appropriate government agency requires disclosure by regulation.*

27 *(c) If the action reported to the Attorney General pursuant to*  
28 *this section implicates the government authority of an agency other*  
29 *than the Attorney General, the Attorney General shall promptly*  
30 *forward the written notice to that agency.*

31 *(d) If the Attorney General was not notified pursuant to*  
32 *subparagraph (A) of paragraph (2) of subdivision (a), but the*  
33 *limited liability company reasonably and in good faith believed*  
34 *that it had complied with the notification requirements of this*  
35 *section by notifying a government agency listed in paragraph (5)*  
36 *of subdivision (e), no penalties shall apply.*

37 *(e) For purposes of this section:*

38 *(1) “Manager” means a person defined by subdivision (m) of*  
39 *Section 17701.01 having both of the following:*

40 *(A) Management authority over the limited liability company.*

1     (B) Significant responsibility for an aspect of the limited liability  
2     company that includes actual authority for the financial operations  
3     or financial transactions of the limited liability company.

4     (2) “Agent” means a person or entity authorized by the limited  
5     liability company to make representations to the public about the  
6     limited liability company’s financial condition and who is acting  
7     within the scope of the agency when the representations are made.

8     (3) “Member” means a person as defined by subdivision (o) of  
9     Section 17701.01 that is a member of the limited liability company  
10    at the time the disclosure is required pursuant to subparagraph  
11    (B) of paragraph (2) of subdivision (a).

12    (4) “Notify its members” means to give sufficient description  
13    of an action taken or about to be taken that would constitute acts  
14    or omissions as described in paragraph (1) of subdivision (a). A  
15    notice or report filed by a limited liability company with the United  
16    States Securities and Exchange Commission that relates to the  
17    facts and circumstances giving rise to an obligation under  
18    paragraph (1) of subdivision (a) shall satisfy all notice  
19    requirements arising under paragraph (2) of subdivision (a) but  
20    shall not be the exclusive means of satisfying the notice  
21    requirements, provided that the Attorney General or appropriate  
22    agency is informed in writing that the filing has been made together  
23    with a copy of the filing or an electronic link where it is available  
24    online without charge.

25    (5) “Appropriate government agency” means an agency on the  
26    following list that has regulatory authority with respect to the  
27    financial operations of a limited liability company:

28    (A) Department of Corporations.

29    (B) Department of Insurance.

30    (C) Department of Financial Institutions.

31    (D) Department of Managed Health Care.

32    (E) United States Securities and Exchange Commission.

33    (6) “Actual knowledge of the limited liability company” means  
34    the knowledge a member, officer, or manager of a limited liability  
35    company actually possesses or does not consciously avoid  
36    possessing, based on an evaluation of information provided  
37    pursuant to the limited liability company’s disclosure controls and  
38    procedures.

1 (7) “Refuse to make a book entry” means the intentional  
2 decision not to record an accounting transaction when all of the  
3 following conditions are satisfied:

4 (A) The independent auditors required recordation of an  
5 accounting transaction during the course of an audit.

6 (B) The audit committee of the limited liability company has  
7 not approved the independent auditor’s recommendation.

8 (C) The decision is made for the primary purpose of rendering  
9 the financial statements materially false or misleading.

10 (8) “Refuse to post any notice required by law” means an  
11 intentional decision not to post a notice required by law when all  
12 of the following conditions exist:

13 (A) The decision not to post the notice has not been approved  
14 by the limited liability company’s audit committee.

15 (B) The decision is intended to give the membership shares in  
16 the limited liability company a materially greater or a materially  
17 less apparent market value than they really possess.

18 (9) “Misstate or conceal material facts from a regulatory body”  
19 means an intentional decision not to disclose material facts when  
20 all of the following conditions exist:

21 (A) The decision not to disclose material facts has not been  
22 approved by the limited liability company’s audit committee.

23 (B) The decision is intended to give the membership shares in  
24 the limited liability company a greater or a less apparent market  
25 value than they really possess.

26 (10) “Material false statement or omission” means an untrue  
27 statement of material fact or an omission to state a material fact  
28 necessary in order to make the statements made under the  
29 circumstances under which they were made not misleading.

30 (11) “Officer” means a person appointed pursuant to Section  
31 17703.02, except an officer of a specified subsidiary limited  
32 liability company who is not also an officer of the parent limited  
33 liability company.

34 (f) This section only applies to limited liability companies that  
35 are issuers, as defined in Section 2 of the Sarbanes-Oxley Act of  
36 2002 (15 U.S.C. Sec. 7201 et seq.).

37 (g) An action to enforce this section may only be brought by the  
38 Attorney General or a district attorney or city attorney in the name  
39 of the people of the State of California.

40 17713.13. This title shall become operative on January 1, 2013.

1     *SEC. 3. No reimbursement is required by this act pursuant to*  
2     *Section 6 of Article XIII B of the California Constitution because*  
3     *the only costs that may be incurred by a local agency or school*  
4     *district will be incurred because this act creates a new crime or*  
5     *infraction, eliminates a crime or infraction, or changes the penalty*  
6     *for a crime or infraction, within the meaning of Section 17556 of*  
7     *the Government Code, or changes the definition of a crime within*  
8     *the meaning of Section 6 of Article XIII B of the California*  
9     *Constitution.*

10  
11  
12     **All matter omitted in this version of the bill**  
13     **appears in the bill as introduced in the**  
14     **Senate, February 14, 2011. (JR11)**  
15